

1906-041
Lee Co.

Chancery Causes: Charles Pennington vs. W. E. Fleenor

Ewing, Courtney, Barlow, Jones, Noel, Goslyn, Flanary,
Sprinkle, Th...

1 Plat

CA-Debt

T-Property

-Deed

To the Hon. H. A. W. Skeen, Judge of the Circuit Court for
Lee County, Virginia:

Humbly complaining, your orator Chas. Pennington, would respectfully represent and show unto your honor, that on the 6th day of Ocotber, 1904, he sold and conveyed unto W. E. Fleenor three certain pieces or parcels of land, lying and being in Lee County, Virginia about one mile east of Occonita Depot, containing in the aggregate 229 1/2 acres, more or less; which land, however, was sold by the boundary and not by the acre, at the price of Two thousand dollars (\$2000.00), a part thereof being in hand paid, and notes executed by the said Fleenor to your orator for the deferred payments, and in said deed the vendor's equitable lien was expressly retained upon the said land until the purchase money was fully paid. All of which will more fully and at large appear by an inspection of the deed from your orator and his wife to the said Fleenor now on record in the clerk's office of the said County. A certified copy of which deed is herewith filed as part hereof marked "A".

Your orator will further represent and show unto your honor that the said Fleenor has paid the amount of the purchase money except a balance of a note for \$600.00 due and payable on the first day of January, 1905, on which note the said Fleenor has paid the sum of \$400.00 and which is credited thereon, leaving the sum of \$200.00 yet due on said note with interest thereon from the said first day of January, 1905. Said note is herewith filed as part hereof marked "B", showing the said credit thereon, and which balance is justly due your orator and which the said Fleenor refuses to pay.

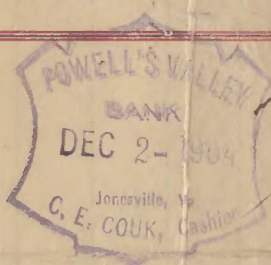
Now, the object of this suit is to recover against the said Fleenor the amount of said note, subject to said credit, and the cost of this suit, and to enforce against said land the said vendor's equitable lien, and to subject the said land to the payment thereof. To this end your orator makes the said W. E. Fleenor party defendant to this bill and

asks that he be required to answer the same, but not on oath, answer under oath being waived; that on a hearing the relief above prayed for be granted, together with all such other, further and general relief as your orator may be entitled to in the premises, and your orator will ever pray &c.

Ans. Hall. p.g.

\$ 600.00

On or before Jan 1st 1905.
I promise and bind myself
hereby to pay to Charles
Pennington, the just and
full sum of six hundred
dollars, for value received of
him in bond, and I hereby
waive the benefit of my
homestead exemption as to
this debt. Witness my hand
and seal this 6th 1904.
W E Pleenor (Seal)



By check \$400.00

W. E. Glenn
To 3 Votes \$600.00
Chas. Pennington

Charles Pennington
vs Bill in Chy
W. E. Fleenor.

1905- 1st Sept. Rules
Bill filed Sp. 44-
entire & D.R.
2nd Sept. Rules
D.R. confirmed and
cause set for hear-
ing.

W. E. Fleenor
Deed. Aug. 10 1906. 45

To the Hon. H.A.W.Skeen, Judge of the Circuit Court for Lee County:

The answer of W.E.Fleenor to the bill in chancery in your Honor's court by Charles Pennington against your respondent. For answer to the said bill or so much thereof as your respondent deems it necessary he should answer, answering he says:

That it is true that he purchased from the said Pennington a tract of land situated near Ocoonita, at the price of \$2000.00, as appears by the ~~xxx~~ copy of the deed filed with the plaintiff's bill, and it is also true that your respondent executed the note referred to in the said plaintiff's bill. ~~But~~ your respondent denies that he owes any part of said note as aforesaid, and that the said Pennington is entitled to recover the same off of your respondent, because your respondent now says and will show unto your Honor that the tract of land ~~conveyed~~ by the said Pennington ~~to~~ your respondent was not at that time owned by the said Pennington as he had represented, but ~~the proof thereof~~ was then and is now the property of the Louisville & Nashville Railroad Co., ~~having~~ been, theretofore conveyed to the said Railroad Co. by the assignors of the said Charles Pennington. The tract of land conveyed by the said deed covers ~~a~~ right of way of the Louisville and Nashville Railroad Co. at this point, yet the said Pennington undertook and did convey to your respondent ~~the~~ whole thereof, but your respondent admits that he was advised by the said Pennington and informed by him at the time of the conveyance, that the said Railroad Co. was the owner of a strip of land 60 feet on each side of the Railroad track, and he claimed the remainder of said tract of land ~~was~~ conveyed and so represented it to your respondent. But instead of the said Railroad Co. owning 60 feet on each side on their track, they now claim and have conveyance for 100 feet on each side through a portion ~~of~~ the land and 80 feet on each side through another portion of it. Your respondent relying upon the representations of the said Pennington as to the amount of land which the said Pennington owned at that point, ~~proceeded~~ ^{brought the same} to improve the land up to

this 60 feet of the said Railroad track and made thereon improvements to the amount of \$10 or \$15. Your respondent alleges that the land taken by the Railroad Co. as aforesaid is the most valuable part of the said tract of land conveyed, being all level land and of the best quality, and your respondent has suffered damages by reason of the loss of said strip of land to the amount of \$250.00. Your respondent also alleges that there was upon said strip of land taken by the said Railroad Co., improvements in the way of graded road which is necessary to the enjoyment of other premises of the value of \$25.00, and that since the said Railroad Co. have taken possession thereof, he will have to build another road at his expense and which will cost him not less than \$25.00. Your respondent would further represent and show unto your Honor that at the time the said conveyance was made, there were tax tickets against the said land amounting to \$12.13, which should and ought to have been paid by the said Charles Pennington and in order to release the lien created thereby on said tract of land your respondent was obliged to pay said sum of money to the Treasurer of Lee County, Virginia, as will more fully appear by the said tickets and receipt for said taxes herewith filed ^{and} as part of this answer. Your respondent states that he does not desire to charge against the said Charles Pennington any fraud or intentional mistake in the conveyance of said land but that the said Pennington was simply mistaken in the amount of land which he ~~owned~~ at that time, and your respondent believes that he was sincere in his representations to your respondent, ^{and he has} ~~as above~~ ^{in the loss of said land & improvements} damaged thereby and here offers to set off his said damages as above stated against the balance due upon said note and asks for judgment over against said Pennington for the difference between the amount which his damages amount to and the balance due upon said note together with his cost in this behalf expended.

And now having answered as fully as he is advised that it is necessary that he should answer and praying for the relief above suggested he prays to be herein dismissed from this suit etc.

Pennington, Bro. p.d.

Mr William Chas W. E. Fleenor Jonesville District, No. 3.

To A. M. ELY, Treasurer Lee County, Virginia, Dr.

No. P ¹⁸	No. L ²¹ 1904	S Tax 20 & 25 cts. on \$100	St'e schl tax 10 cts on \$100	Pensions 5 cts on \$100	Co. Levy 40 cts. on \$100	Road T. 33 1/3 cts. on \$100	Co. sch'l tax 10 cts on \$100	Dis Schl tax 10 cts on \$100	TOTAL AMT OF TAXES.
Head Tax	Val.	\$1 50							\$1 50
Per. Prop.									
Bonds, Notes &c									
No. 1 Tracts 32 Acres	8000	16	08	04	32	27	08	08	1 03
Lots									
TOTAL		16	08	04	32	27	08	08	1 03
5 per cent pen'ty									5

Received Payment, Nov 7-1904 J E Ely D 108, Treasurer 1113

Mr. Pennington Charles W. E. Flanor Jonesville District, No. 3.

To A. M. ELY, Treasurer Lee County, Virginia, Dr.

No. P 15	No. L 20	1904	S Tax 20 & 25	St'e schl tax	Pensions	Co. Levy 40	Road T. 33 1/2	Co. sch'l tax	Dis Schl tax	TOTAL AMT
18	23		cts. on \$100	10 cts on \$100	3 cts on \$100	cts. on \$100	cts. on \$100	10 cts on \$100	10 cts on \$100	OF TAXES.
Head Tax 1		Val.	\$1 50							\$1 50
Per. Prop.	290		58	29	15	1 16	97	29	29	3 73
Bonds, Notes &c										
No. 1 Tracts										
185 Acres	370 ⁰⁰		74	37	18	1 48	1 24	37	37	4 76
Lots										
TOTAL			2 82	66	33	2 64	2 21	66	66	9 98
5 per cent pen'ty										50

Received Payment,

Nov 7 - 1905 J. E. Ely Jr. Treasurer 10.48
11.00

This answer is excepted to because it seeks to set up a defense in contradiction of the deed from plaintiff and wife to defendant. The said deed shows a contract of hazard and the said answer is therefore no defense to the plaintiff's bill and is excepted to on that ground. November 29th 1908.
 Ours & Seal. for Jeff.

W. E. Stearns
 ad. 3/4
 Chas Pennington
 Filed Nov. 16th 1908
 H. E. T. Conway
 Clerk.

1.08
 1.048
 125 - 1000
 137.56

Pennington Bros.
 ATTORNEYS AT LAW
 JONESVILLE AND PENNINGTON GARVA.

187.56
 185.00
 2.56
 credit when paid
 date of Recd of bill -

Chas. Pennington

Plaintiff.

vs.

In Chancery

W. E. Fleenor,

Defendant .

This cause came on again to be heard upon the papers formerly read in the cause, and it being admitted in the cause that since the rendition of the decree at a former day of the present term, the entire matter in controversy has been settled and adjusted between the parties pursuant to the requirements of the provision of the said decree, and that nothing further remains to be done in this cause. It is adjudged ordered and decreed that as ~~this~~ ^{the amount due to plaintiff} is the last of the purchase money due from the defendant to the plaintiff for the land in the bill mentioned that the defendant is entitled to have the vendor's lien retained thereon in the deed from the plaintiff to the defendant, released upon the record of said deed, and the cause is stricken from the docket.

Charles Pennington
vs. Decree Final.
W. E. Fleener.

Enter this decree.

Feb. 1906.

Charles Pennington Complainant
vs. Dr. Chouery
N.E. Fleury Defendant

This Court came on this day to be heard upon the papers formally read therein and the depositions of witnesses, and was argued by counsel:-

On consideration of all which the Court is of opinion that the defendant is entitled to an offset against the plaintiff's claim for an account of the right-of-way of the rail road, being wider than the Plaintiff represented it to be & in the sum of \$125.00 as of the date of the said note and upon by said plaintiff and also credit for the ~~sum~~ amount paid by the defendant for taxes as of the date of the payment of the same, and that said defendant should pay the general costs of this suit - including an attorney fee of \$15.00 to be taxed against him and that the plaintiff should pay the costs of the depositions taken in this cause.

It is therefore adjudged ordered
and decreed that the said plaintiff
recover of the said defendant the
sum of \$600.⁰⁰ with interest thereon
from the 1st day of June, 1905,
subject to a Credit of \$125.⁰⁰ as
of Oct 6, 1904, \$400.⁰⁰ as of Dec
2, 1904 (indorsed on note sued on) and
\$12.14, as of Nov 7, 1905 (the amt paid for
taxes) and the general costs of this suit:
and unless said sum of money be
paid within 30 days from this
date then J. H. Orr who is hereby appointed
a Special Comm. for the purpose will
make sale of enough of the land
in the lines mentioned to pay said
sum of money including said costs,
and a Credit of 12 months, at
public auction, at the front door
of the Court House of Lee County
to the highest bidder, after having
advertised the time terms & place
of sale for 30 days or more
by written or printed notices
posted at 3 or more public
places in Lee County and
after having executed bonds

in the sum of \$200⁰⁰ con-
ditioned as the law requires,
before the Clerk of this Court, and
report his action to the next Term
of this Court.

And it is further adjudged
ordered and decreed that the
defendant recover of the Plaintiff
his costs of the taking of his dep-
ositions in this Court including
the attendance of his witnesses,
and the plaintiff pay his own
costs of the taking of his depositions
& ~~with~~ witness attendance.
And this Court is continued.

Chas Runnells Plt.
y^e ²/₂ Decr for sale
W. E. Filson Sept

Entered in C.B.
#8, Page 133 &c.

Enter this Decr
July 21, 1906
A. W. S. M.

Chas. Pennington,

Plaintiff.

vs.

In Chancery.

W. E. Fleenor,

Defendant.

This cause came on to be heard upon the bill of the plaintiff and exhibit therewith, the cause regularly matured at rules, and set for hearing by the plaintiff, and was argued by counsel. And by agreement of parties the defendant was given until First November Rules, 1905, to file his answer in the cause. And the cause is continued.

Charles Pennington.

vs. Decree.

W. E. Fleener.

Entered in C.O. B. 8
page 77

Enter this Decree.

J. C. W. Stuen

Sept 25 1905.

The depositions of W. E. Fleenor, H. C. T. Ewing, E. C. Courtney, Geo. Barlow and Hiram Jones, taken before me A. O. Brown a notary public in and for the County of Lee and State of Virginia at the law office of James W. Orr by agreement of parties on the 29th day of November, 1905. to be read as evidence on behalf of the defendant in a certain suit in Chancery pending in the Circuit Court for Lee County wherein Chas. Pennington is plaintiff and W. E. Fleenor is defendant.

PRESENT: R. L. Pennington counsel for Deft.
James W. Orr Counsel for Plff.

W. E. Fleenor a witness of lawful age being duly sworn deposes and says:

Q.-- State your age, residence and occupation?

A.-- Thirty-eight, reside at Occonita, Virginia. lumbering and farmer.

Q.-- Are you the defendant in this case?

A.-- Yes sir.

Q.-- The plaintiff has sued you for a balance of \$200.00 on a note executed by you to him for the balance of purchase price of a tract of land purchased by you from him on the 6th day of October, 1904, please state whether or not you owe him any or all of the said note, and if not, why not?

A.-- I consider that I do not owe it. A very little if any. My reason for it is that he sold me some land he could not make me a good title to.

Q.-- The plaintiff made you a deed for the tract of land described in the copy of the deed filed with the plaintiff's bill, marked "Exhibit A".

A/ He did.

Q.)-- I will ask you to state if the L. & N. Railroad company's road passes through any portion of these several tracts of land?

A.-- This question and any answer thereto, and all similar questions which ^{are} intended to in any way contradict or vary the deed from the plaintiff and wife to the defendant are excepted to because the said deed shows the contract between the parties, and is the best evidence as to what the contract was, and the said deed shows the contract to be a

Contract of hazard, the sale being by the boundary. *and not by the acre.*

Orr for Plaintiff.

A.-- It does, it passes through the entire 185 acre tract from east to west and also through the thirty-two acres tract also. But it does not touch the half interest in the twenty-five acre tract.

Q.-- I will ask you to state if the boundary given did cover the L. & N. Railroad's right of way.

Same objection as above.

Orr for plff.

A.-- It does, it covers the entire boundary as described by this line.

Q.-- At the time that you purchased this tract of land you were informed/ however, were you not by Mr. Pennington that the L. & N. Railroad company did own a right of way through this particular piece of land?

Same objection as above.

Orr for plff.

A.-- Yes sir, at the time I bought it, and I bought it once before it was explained to me.

Q.-- How wide did Mr. Pennington claim the right of way to be through these tract~~s~~ of land ~~land~~?

A.-- He claimed it was sixty feet either way from the railroad track through the main tract or the 185 acre tract and that it was fifty feet on either side through the thirty-two acre tract.

Q.-- Did you take his representation at the time as a fact and made your contract without further investigation?

A.-- Same objection as above.

Orr for Plff.

A.-- I did.

Q.-- Have you examined, since you got the deed from said Pennington the conveyance to the L. & N. Railroad Company through this land to ascertain what is the width of the right of way through this land?

Same objection as above and the further objection that the deeds are the best evidence.

Orr for Plff.

A.-- Yes sir.

Q.-- What do these deeds show the right of way to be?

A/-- Same objection as the one preceeding.

A.-- They show that the right of way through the main tract is ^{own for plff.} 100 feet on either side, making a total of two hundred feet, that is the 185 acre tract, and eighty feet through the thirty two acre tract, on either side making 160 total.

Q.-- Have you made a calculation as to the number of acres which the deed takes over and above the amount represented to you by Mr. Pennington to be owned by the railroad company, and if so, how many acres does it make.

Same objection as above.

Orr for plff.

A.-- I estimated it, or made a rough calculation of it, and I figured it out to be something like seven acres over and above the sixty and fifty feet allowed.

Q.-- Was Pennington in possession of any part of the right of way when you make the purchase?

Same objection as above.

Orr for plff.

A/-- Yes sir.

Q.-- Did he have any buildings or improvements thereon which were turned over to you with the conveyance.

A.-- At the time I made the purchase he had buildings on it, and he had roads fencing some orchard, garden, and was also doing some clearing on the strip that is, the forty and eighty foot strip. I do not believe he ^{had} anything on the thirty two acre strip.

Q. I will ask you to state what is the value of this strip of land lying on either side of the railroad which is covered by the railroad company's right of way over and above the amount which ~~xxx~~ he stated to you the railroad company owned?

Same objection as above.

Orr for plff.

A.-- At the time I made the payment that is, all except this note I considered it worth \$200.00 the amount I declined to pay, and I have figured it over a little closer, and I thought \$150 would cover the whole thing.

Q.-- Was that road that was built ^{on} the right of way necessary to the ~~improvement~~ ^{improvement} of the other premises.

A.-- Yes sir it was. It was always a public road. He had a blacksmith shop in front of his house, and this might be considered a public road to the main county road. The railroad company has now fenced the land and put that inside, and I will have to make a new road in order to get out to the public road, by way of a front entrance.

Q.-- When did you first find out that Mr. Pennington did not own at the time he conveyed it to you as much of this land as he claimed?

A.-- I first found it out ~~that~~ a day or two before the election in November 1904, and he was to have been here on election day, and I was going to take him to the clerk's office, and let him see it, but he did not come and I took his brother Jeff, as he was a joint owner when he made the railroad company deed for the right of way, and we read it over together.

Q. After examining the record did you have any talk with Mr. Pennington, and if so what did he say about it.

A.-- After I was informed that the right of way was more than sixty feet and fifty feet on either side Mr. Pennington promised to come and look at the record himself, but did not do so as I am informed, and after I had examined the record on election day I went to him and had a talk with him. He and his brother Jeff and his brother Dave were in his shop together, and I told him what the deed showed. And he just said, well I will just say Judge Duncan is the meanest man on earth or something of that kind, he has gone and raised that deed on me and I have signed it without reading it.

Q.-- I will ask you to state if you have since the institution of this suit been compelled to pay any sums of money for taxes due by Chas. Pennington which the treasurer claimed to be a lien on this tract of land.

The foregoing question and any answer thereto is objected to as to any claim that the treasurer may have made, and if the question is intended to refer to the tax ticket filed with the defendant's answer, it is further objected to because the tax ticket shows a charge against Chas. Pennington against personal property ^{+ Capitation,} which the defendant was not obliged to pay, if he was in fact obliged to pay ^{any of} the charges on the land, which is not admitted.

Orr for plff

A.-- Yes I have paid one tax ticket of \$1.13 and one of \$11.00 on November 7th, 1905, which are filed with my answer, and these sums of money I offer to offset against the note filed with the plaintiff's bill.

Q. I will ask you to state, if on the first day of February 1904, Chas. Pennington was a resident of Lee County, Virginia.

A.-- He was.

Q.-- I will ask you to state who received the rents and profits of the farm which you purchased from Pennington for the year 1904.

A.-- Chas. Pennington.

Q.-- I will ask you to state whether you made any contract with Pennington to pay the tax ticket on this land for the year 1904?

A. I did not. He claimed that the taxes were paid for 1904.

CROSS)--- EXAMINATION BY Orr.

Q.-- When did the plaintiff give you possession of the land that he sold to you.

A.-- He gave possession of the farm the first of January, 1905. He was to turn over this main dwelling to me sooner than Jan. 1st, provided he left before that time, and he did turn the residence over to me some time in November, 1904. about Nov. 16th.

Q.-- Was the dwelling house in which he resided on that land that he gave you possession of before the first day of January, 1905.

A.-- He let me have the house and a portion of the farm that was not in the possession of tenants before the first day of January, 1905, along about the time he gave possession of the dwelling house.

Q.--

Q:-- Do you know whether or not Mr. Pennington had paid the taxes on his land that he sold you for the year 1904.

A.)) I do not know anything further than what he said and what the collector said. He said he had and the collector said he had not.

Q.-- Who prepared the deed that the plaintiff and wife executed to you ?

A.-- H. C. Joslyn.

Q.-- You knew at the time that the purchase was made that the L. & N. Railroad company had a right of way ^{and track} through the said land, and operated them daily, did you not?

A.-- I did.

Q/-- You lived in that community did you not?

A.-- Yes sir.

Q.-- Did you not know it to be a fact that condemnation proceedings or deeds of right's of ways for railroads are always matters of record in the clerk's office?

The foregoing question and any answer thereto is objected to because irrelevant, and because there is no law requiring a person to examine the record to see whether or not a man owns land, or does not and whether a railroad company owns a part of the land or does not. and because the defendant had a right to rely upon the representations of the plaintiff in regard to his title, and if it should prove false would be entitled to damages to the extent he was damaged by such false representation.

Pennington. for Deft.

A. I do not know anything about the railroad company's business as to their matters of record.

Q.-- Do you not know that it is usual for such matters to be made matters of record?

Objected to as irrelevant. Pennington.

A. I just know that some people have their deeds recorded and some do not

Q.-- You did find this right of way matter, a matter of record did you not?

A I did.

Q. How far does the 100 feet of right of way on either side of the railroad tract extend through the 185 acre tract, or in other words what is the length of the same?

A.-- I do not know exactly, I believe it is 3262 feet perhaps 3292.

Q. How far does the eighty feet of right of way extend in length through the thirty two acre peice of land?

A.-- That is about 700 feet, I only examined by counting the rails.

Q.-- Will you please ascertain and state how many feet is cut off in the strip of forty feet wide and on either side of the railroad tract through the 185 acre tract of land that you say the plaintiff sold to you improperly?

A.-- The way I arrived at my calculation was, take the railroad company's deed which gave, as I remember it through the 185 acre tract fourteen acres as the whole of the right of way, and 80 feet off ~~of this~~ would be exactly $2/5$ of the entire amount, and this is the manner in which I arrived at the amount contained in the two tracts which I lost by reason of the railroad company's right of way covering more than Pennington claimed. and I believe it is something like $5 \frac{1}{2}$ or six acres that I lost in this tract.

Q. How much do you claim in the strip as a deficiency in the thirtytwo acre tract?

A /-- It is something like $1 \frac{1}{4}$ or $1 \frac{1}{2}$ acres/ I simply made a rough estimate of that.

Q. You spoke of the railroad company taking possession of a road from the dwelling house out to the public road, did not that road pass over the right of way?

A. Yes sir, it passed over this forty feet I thought I was getting.

Q. What is the distance or length of that road from the house out to the public road.

A. It is something like 100 yards I guess. I never measured it.

~~Signature waived.~~

And further this deponent saith not.

Signature waived.

E.C. Courtney another witness of Lawful age being duly sworn deposes and says:

Q.-- Are you acquainted with Chas. Pennington and W. E. Fleenor?

A.-- Yes sir.

Q. How old are you and where do you live?

A.-- I live at Truro and am thirty-seven years old.

Q.-- Are you acquainted with the lands which W. E. Fleenor purchased from Chas. Pennington near Ocoonita?

A / Yes sir I am acquainted with it.

Q.-- Are you acquainted with the strip of land on either side of the railroad track, or right of way, through this land?

A. Yes sir.

Q. Have you been informed of the dispute between W. E. Fleenor and Chas. Pennington in reference to a shortage in the amount claimed to be owned by Pennington at the time he sold to Fleenor, and if so, state how much you have been informed that shortage was and the value of it.

This question and any answer thereto and any similar question and answer that is intended to controdict or vary the deed between the parties is excepted to as irrelevant and inadmissible the deed being the best evidence.

Orr for Plff.

A.-- I have been informed that there is a dispute of forty feet on each side of the railroad right of way through the 185 acre tract, and I do not know as to the width in dispute through the other tract. At the least calculation I could put it, it would be \$125.00

Q. I understand that you mean by \$125.00 that the land lost to Mr. Fleenor is worth that much including the convenience it would be to the person owning the farm.

Same objection as above. Orr for Plff.

A. That is the way I look at it.

Q. What would you value the damage on the thirty two acre piece to be?

A. I do not understand how that is.

Q. Did you examine that strip of land with a view of making up an opinion as to its value?

Q. Yes sir., I put the strip on the two tracts at \$125.00

Cross-- examination by James W. Orr

Q.-- Will you please state nature of the strip of land that the defendant claimed he has lost and how situated.

A. Part of the land is productive, and a part is not. Some of it has banks and ditches, and some of it is level and very productive.

Q. Is it all cleared land through the 185 acre tract?

A. No sir, there is a strip on it that is not cleared on the south side of the railroad running about one half the length of the tract that is not cleared, there is some timber on it, a couple of poplars and some black oaks and water oaks on the forty feet strip south of the railroad right of way.

Q. What does such land as that usually sell at in that neighborhood.

A. I just do not know, I have never measured it out and sold any by the acre.

Q. How many acres do you consider un the 40 foot strip through the 185 acres.

A. I do not know, I could not answer that, I would not know how to figure it out if I were to try.

Q. How do you arrive then at the value of \$125.00 for the strip?

A. I consider the convenience to the place, it would be a big thing to some people, and I guess they would give more than that. As the road he will have to make will have to go through his barn to make it convenient.

Q. Is it not a fact that this land there in the Poor Valley, and on the divide between the waters is very thin and not productive by any means?

A. As I stated before, a part of it is, and a part of it is very fair land.

Q. Is it not a fact that \$10.00 or \$12.00 is a fair price for this quality of land in this community and about as high as it ever sells.

A. I think it would bring more than that the way land has been selling.

A.-- I expect that it would bring more than that the way land has been selling.

Q.-- You say you examined the land for the purpose of forming an opinion as to its value, at whose request did you examine the land?

A.-- Mr. W. E. Fleenor.

Q.-- When did you make your examination?

A.-- Yesterday.

Re-Direct examination.

Q. Is not this strip of land on either side of the railroad right of way in dispute very much better and above the average in value of the ~~land~~ remaining part of the tract.

Same objection as ^{taken} ~~given~~ to similar question above.

Orr for plff.

A. I believe it is. I would rather have one acre down there than ten up in those ~~high~~ rough high places.

Q.-- Is not a large part of this land situated on the south side of Stone mountain?

A. Yes sir.

Q. Is not this particular strip along with a little adjacent land on either side about the only land that can be cultivated in the entire two tracts?

A. I do not understand the question.

Q. I will ask you to state about how wide the tillable land is that runs through the Poor Valley at this boundary on the 185 acre tract.

A. From the county road down along the foot of the mountain to the right of way is about 350 feet. On the south side from the right of way to the ridge there is about 250 feet of tillable land.

Q. Taking the value of the farm at \$2000.00 the price agreed upon between Pennington and Fleenor ^{you} to do ^{you} consider \$125. a reasonable amount for the 40 feet on either side of the railroad track referred to above?

Same objection as above. Orr for plff.

A. I think if the whole farm is worth \$2000.00 this strip is worth \$125.00

Re-Cross Examination by Orr. it is

Q. If I understood you, you state that you think that ³⁵⁰ ~~350~~ ft from the upper side of Mr. Fleenor's house ~~at~~ the mountain to the right of way

2 I will ask you to now think about it and see if you do not think that it is at least 200 yards from the right of way to the upper side of these fields?

A. I do not think that it is 200 yards, and I think 350^{ft} is about correct.

Q. I believe you state that it is 250 feet of cleared land on the Poor Valley ridge side on the south side of the right of way, I will ask you if it is not nearer 200 yards.

A.. I will say that there is one field, the one about opposite Mr. Fleenor's that perhaps would be that much, but in the others it is not.

And further this deponent saith not.

Signature waived.

Geo. W. Barlow another witness of lawful age, being duly sworn deposes deposes and says:

Q. What is your age, residence and occupation.

A. I live in the Poor Valley and am fifty one years old, and a farmer.

Q. Are you acquainted with the land conveyed by Chas. Pennington to W. E. Fleenor situated near Ocoonita?

Yes sir.

Q. Are you acquainted with the land lying near to the L. & N. Railroad company's right of way?

A. Yes sir, I have been over it.

Q. What do you consider the value of the strip of land 40 feet wide on either side of the railroad company's right of way through this land?

This question and any answer thereto, and all similar question that are intended to controdict or vary the contract between the parties as shown by the deed are excepted to as irrelevant and immaterial and inadmissible the contract being one of ^{purchase} ~~sale~~ and the sale being by the boundary.

Orr for plff.

A.-- I looked over the strip yesterday and I did not measure the number of acre, but he said there was something like six or seven acres cut off, and taking every thing in to consideration, the conveniences to the place ~~being moved~~, and the road being closed up I thought the damage ought to be something near \$125. As near as I could put it.

Q. Taking the whole farm at \$2000.00 would \$125.00 be a reasonable price for this 40 feet strip on either side of the railroad?

A. It is lit le enough, I put it a~~l~~low as I thought a man could stand it. I consider this \$125.00 as the value of the whole strip through both tracts.

Q. How long have you been acquainted with this tract of land?

A. About thirty years.

Cross examination.

Q. Please give the nature of the strip of land of which you speak, as to its productiveness, the condition it is in, whether rough or smooth?

A.-- The majority of it is rather smooth, something like 3/4 of it is rather smooth/ and as to the productiveness, some of it produces very well, and some does not, I have seen as fine corn there as I ever saw any where. Of course the garden spot that they cut off is very valuable, I would consider it would bring 50 bushles of corn to the acre.

Q.-- What does such land as that usually sell for in that community?

The foregoing question is objected to because the plaintiff has a right to a rebate for such a mount of land as he lost according to the price which he paid for the land.

Pennington.

A. Well I could not tell you for I do not know of any land that has been sold along there. I have land in the Poor Valley that I paid \$20.00 per acre for, and paid the money for it too, and I have bought some for \$10.00 and some for less. I say if I was buying it I would pay more than that for this strip, or if I was selling it off it is worth what I said it was because it gave him an outlet without him running

through his garden or orchard, and as it is not ^{for} he must run through his garden to get to the public road, and it cuts off a number of fruit trees that I noticed was outside of the wire fence, some 6 or 8 I guess, and it cut off a lot of his fence and through ^{and} ~~it~~ it to the company.

Q. You spoke of ~~the~~ his being deprived of a road made on the right of way to his house, is it not a fact that he could make a road, or have a road from ~~from~~ the back of his house out to the public road along above the barn making it about the same distance as the old road was?

A. It might be near the same distance, but not as convenient.
of cleared

Q. Do you know the amount ~~xxxxxxx~~ of land ~~xxxxxxx~~ in the boundary the plaintiff bought from the defendant?

A. I do not.

Q. What is the distance of the right of way on the north side to the upper side of the cleared fields on the mountain side?

A. I would think it was something like 200 or 225 yards.

Q. What do you think is the distance from the railroad right of way on the south side to the upper part of the cleared land on the Poor valley Ridge.

A. I do not know that I could estimate it I did not pay any attention to that.

And further this deponent saith not?

Witness so cts.

Signature waived.

Hiram Jones another witness of lawful age, being duly sworn deposes and says:

Q. What is your age, residence and occupation?

A.-- Fiftyone years old, I am a farmer and live at Occonita.

Q.-- Are you acquainted with the land which Chas. Pennington sold to W.E. Fleenor?

A.-- I am, have known it about two years.

Q.-- Have you examined the strip of land on either side of the rialroad company's right of way that runs through this tract of land?

and if so, consider ing the whole farm worth \$2000000 what would you consider these two strip of 40 feet through the 185 acre piece and of 30 feet through the thirty ~~ten~~ acre piece reasonably worth.

The same objection to this question and to any similar question and answer is made as was made to the question/and answer/ ~~as was given~~ to the proceedings/ witnesses and for the same reason.

Orr for plff.

A.-- Yes sir I examined it yesterday. We looked over the piece of land with a view to estimated the loss, and I thought I would allow him \$150.00, while we gave him \$125. My judgment was that it was that much loss to him. If the land was mine and the railroad company would sell me that land I would give them \$150.00 for it, but if the land belongs to me I would not sell it to the railroad company for that amount.

Q. If the whole farm is worth \$2000.00 would \$150 be a reasonable price for this part of it.

Excepted to ^{for same reason &} be cause leading.

Orr for plff.

I would think it would be.

Cross examination by Orr.

Q. Please state the nature of this strip of land, as to its quality, productiveness &c.

A.-- There is some of it that will not make anything some of it is very fair land. along where the cut is in that divide there it is not very good, and there is some fields that is very good. on both ends of the place.

Q.-- What does such land usually sell for in that community?

A/-- It would be owing to where it was at. There is some that would sell high, and some that would not be worth much. It would be owing to where it was situated.

Q.-- At whose instance did you and Mr. Courtney and Mr. Barlow ~~go~~ and ascertain the value of the land?

A.-- Mr. Fleenor,

Q.-- How far do you think it is from the right of way to the upper side of the cleared fields on this land on the mountain or north side,

A.-- I think something like 200 or 250 yards.

Q.-- What do you think is the distance from the rialroad right of way to the upper side of the cleared fields on the Poor Valley ridge side?

A.-- I would think that it would be something like 200 yards.

And further this deponant saith not.

Signature waived.

Attendance ~~ca~~ 50 cts.

H. CL T. Ewing, another witness of lawful age being duly sworn deposes and says:

Q. What office do you hold,

A. County Clerk.

Same objection as to the foregoing witnesses. Off. for ~~off.~~

Q. As such do you have charge of the deed books for Lee County?

A. Yes sir.

Q.-- I will ask you to make copies and file same with your deposition of the followig deeds? Deed from Ransom Russell and others to Chas. & Jeff Pennington, dated April 25th, 188²~~3~~, recorded in deed book No. 22 page 110/ deed from W. J. Pennington to Chas. Pennington recorded in deed book No. 33 page 465, deed from Chas. Pennington and others to L. & N. R.R.Co., deed of John Pennington to L. & N. R. R. Co., deed from W. J. Pennington and others to Chas. Pennington conveying an interest in the land of John Pennington, deceased, for the thirtytwo acre tract.

A.-- I make copies of said deeds and file same with my depositions marked Deed Nos. 1,2,3,4,

And further this deponent saith not.

Signature waived.

A. M. Ely an other witness of lawful age, being duly sworn deposes and says:

Q. What office do you hold in Lee County,

Same objection as to the testimony to the preceeding witness. Orr for Plff.

A.)) That of treasurer, and have been since 1903.

Q.-- You have made off against Chas. Pennington for the year 1904 two tax tickets, one for 32 acres of land valued at \$80.00 with taxes

amounting to \$1.13 including penalty, and one for \$2.90 personal property. *Capitation tax & 185 acres of land valued at \$370.00 the 32 acre tract and amount to \$1.50 both taxes are for the tract of 185 acres valued \$13.70.* I will ask

you to state whether or not these are proper charges against Chas. Pennington as shown by the personal property and the land books for the year 1904, and by whom were these taxes paid.

This question and any answer thereto is excepted to because the tax tickets if correct are not proper claims on the defendant and especially so in regard to one of the tickets which is a tax on capitation and personal property. Orr for plff.

A. I think they are proper charges. The stub shows \$9.98 without the penalty, and I think that is correct. I can not state who paid these taxes I see it was received by my brother John C. Ely D.T. on the 7th day of November, 1905.

Q. Have these charges been paid to you at any other time than Nov. 7th, 1905? or by Chas. Pennington at any time?

A. If they have I know nothing of it, and have no knowledge or remembrance of Chas. Pennington paying the taxes for 1904. I am very certain he did not pay them, and I have nothing to show that he did.

And further this deponent saith not?

Signature waived.

Virginia, Lee County, to-wit:

I A. O. Brown a Notary public in and for the county and state aforesaid, do certify that the foregoing depositions of W. E. Fleenor, E. C. Courtney, G. W. Barlow, Hiram Jones H. C. T. Ewing, and A. M. Ely were taken and sworn to before me, the signatures being waived, at the time and place and for the purposes in the caption mentioned.

This the 29th day of November, 1905.

N. P.

Chas Pennington

72 } Depositions

W. E. Flemer

Filed Dec. 9th 1905

J. H. T. Cuming
Clerk

W. E. Flemer 1-7

E. S. Courtney 7-11

Gro. W. Borlow 11-13

Hiram Jones 13-16

6711-

300

Notary's Fee, ^{total} \$12.00

Met pursuant to adjournment, Jan'y 20th 1906.

D. R. Noe another witness of lawful age being introduced for the plaintiff deposes and says.

Q. Please state your age residence and occupation?

A. I am 41, reside at Ocoonita, Virginia, and am a farmer and merchant.

Q. Are you acquainted with the land sold by Wm. Pennington to W. E. Fleenor, if so, how long have you known it?

A. I have known the farm for something like 25 or 30 years and was raised near it with ⁱⁿ 1 1/2 miles, and have resided in that community all my life, and I have cut some timber off of the land.

Q. What do you consider the strip of land in controversy, that is the 30 foot strip on either side of the right of way through the 32 acre tract and the 40 foot strip through the 185 acre tract worth per acre compared with the price paid for the boundry excluding the buildings and improvements of that kind.

A. I consider the improvements are worth from five to seven hundred dollars including the orchard, and taking this farm ^{at} the amount paid by the boundry I would think the strip in controversy would hardly be worth as much per acre, even, as the next 40 feet from the 100 foot right of way would be worth, and I would not think the strip would be worth as much per acre as the rest of the boundry considering the timber on the rest of the land.

Q. Please state the nature of the strip of land with reference to the quality for farming purposes &c compared with the balance of the boundry.

A. On the north side of the railroad and on the west end of the ~~side tract through~~ tract of land it is all right for a distance, then sets in some little drains and on top of the summit I believe there has been waste dirt spread on it from the cuts, which make it poor and lowers the grade of the soil, and then sets in some very low and marshy places, that I do not believe could be cultivated reasonably, then on the east end coming ^{There is some} back ~~some~~ good land, as good as the average of the farm, is my way of looking at it. On the south side the farming land is all right beginning at the east on the strip until you come about one third of the way, then there is a ditch dug, and seems

1

they have fenced the land, the fence running in places right close to this ditch and rendered that strip in poor shape for farming purposes; also on the west end there is another one of these marshy, standing water places on a part of it. Of course I never measured these distances and I could not say that it is all this way.

Q. Upon the whole what do you consider the strip worth per acre compared with the entire boundry at six or seven dollars per acre?

A. I would think it was one or two dollars less valuable compared with the price paid for the boundry.

Q. Were these ditches that you speak of cut by the railroad company in constructing their railroad, and were they there at the time the defendant bought the land from the plaintiff?

A. I did not see them cut, but I know it was the custom with the contractor to cut such ditches, and they have been there a long time, and were there at the time the land was last sold.

Q. Had the railroad company fenced any portion of their right of way on the east end before the sale of the land by the plaintiff to the defendant?

A. The railroad company had put up a fence, but I do not know whether they considered ^{to the extent of} their right of way or not, but they put it in on the south side of the track on the east end. and it was thereat the time of the purchase.

Q. Has this fence been moved since by the railroad company or any one else?

A. I do not know. I have passed there on the train since they fenced their entire right of way, but I do not believe that I have walked the track?

Q. About what distance did it seem to be from the center of the of the right of way or railroad track?

A. It was not quite as far as they have fenced recently near the dwelling house.

Cross Examination by Pennnington.

A Have you examined the damage done down at the dwelling house by

reason of setting the fence up nearer to Mr. Fleenor's house?

A. No sir, I have never examined it any way in particular, and never looked at it thinking I would be called upon in this suit?

Q. You do not know how much of his garden and conveniences about the premises and at the house has been damaged by cutting off the extra 40 feet.

Excepted to for reasons stated above.

J. W. Orr/

A. I have not examined it with that view.

Q. Were you acquainted with the shop?

A. Yes sir I have seen it and been in it.

Q. What do you think it would be worth to move the shop and place it on his own land?

Excepted to for the same reasons.

J.W.Orr

A. I hardly know what the real value would be, it would depend on where he wanted to move it to. I could not say exactly, but would think it could be moved for \$5.00 to take it across the

R.R. road where Mr. Roberts lived.

Q. Do you know how much damage was done to the garden?

A. No sir.

Q. Do you know how much it would cost to rebuild a road out from his house to the public road?

A. No sir.

Q. Assuming that the property was your own, and you owned within 60 feet on either side of the railroad track through this large tract and within 50 feet through the smaller tract, and you had paid and the land was worth \$2000.00 all together up to within 60 and 50 feet as aforesaid, for what sum would you have been willing to have conveyed to the railroad company 40 feet more on either side of their right of way through the large tract and 50 through the

small tract taking ~~into~~ consideration they cut off his out let to the public road, the damage to his garden, and being deprived of that particular strip of land for railroad purposes, what price would you think ~~they ought to have~~ you ought to have justly and fairly from the railroad company for that strip of land under these conditions?

Excepted to for the reasons before stated and because it is irrelevant and immaterial, the question being what the strip of land is worth per acre, compared with the boundry at the price paid for the boundry. J. W. Orr.

A. If I knew I was going to sell the farm I would made a difference in value and consideration if they were to come and offer me an amount for it, but if I was going to reside there I would not have it cut off for less than \$100.00

Re-direct examination by Orr.

Q. You state that you think it would have been worth \$5.00 to have ~~torn~~ down the shop and moved it across the railroad on the Poor Valley ridge side where Mr. Roberts lives, and where Mr. Fleenor moved it to. What do you think it would have been worth to have torn down the shop ^{or} ~~and~~ to have moved it without taking it down simply off the right of way on to his own land?

A. If it was torn down I would consider it worth the same less the hauling, but if it was moved on rollers over to the other side, I would say \$2.00, and in both answers I have not considered the fire place, and I do not know either whether it was an old one and needed a new fire place or not.

And further this deonant saith not.

Signature waived.

One day 50 cts.

The deposition of J. W. Orr was taken and sworn to before me this 28th day of January 1906.
R. C. Brown N. P.

Chas. Pungton

W. J. Deposition

W. J. - Honor.

Filed February 14 1906.

J. H. T. Ewing
Clerk.

D. R. W. 50¢

Albert - Garret - 50¢

Met pursuant to adjournment January 30th, 1906.

W. J. W. Pennington another witness of lawful age being duly sworn deposes and says: *for defendant*

Q. State your age, residence and occupation and your relationship to Chas. Pennington the defendant in this case?

A. 48 year old, live at Occoonita, Va. and am a farmer and saw milling. and am a brother of the plaintiff in this case.

Q. Please state what you know with reference to your brother, Chas. Pennington's claim as to the amount of the land which the L. & N. Railroad company owned as a right of way through the land which he sold to W. E. Fleenor.

A. Brother Charlie always claimed that they had 60 feet on either side of the center of the track, but I thought they had 80 feet through the large tract and 70 through the other on the north side.

Q. Were you at any time present during the negotiations of the trade between your brother and Mr. Fleenor.

A. Yes sir, I was present some of the time but I did not pay any attention to what was said.

Q. After the trade was made and it was ascertained for sure that the railroad company did own 100 feet on either side of the track, state whether or not you ^{heard} ~~had~~ any conversation between Mr. Fleenor and Mr. Pennington with reference to the right of way.

A. No sir, I did not.

Cross examination by Judge Orr.

Q. I Believe you owned an interest in some of this land at one time?

A. I owned a one-half interest at the time the railroad was built through it.

Q. When the railroad company fenced any of their right of way on the ridge side what distance did they fence from the center of the land.

A. They fenced a little patch down on the lower end on the east end at first, and they fenced I think about 80 feet from the center of the track.

Q. Was that fence standing there at the time the trade was made between Mr. Pennington and Mr. Fleenor?

A. It was, a good many years before.

Q Did the railroad company cut any ditches on the south side of the right of way, and if so, where did they cut the same?

A. Yes sir, they cut a ditch along pretty close, about 80 or 90 feet from the center of the track on the east end of the tract, what is called the divide, right on the summit.

Q. Was that ditch there when the defendant bought the land from the plaintiff, and did he have knowledge of it?

A. Yes sir, I think he did, he ought to have known it, when he was on the land every day all most.

Re-direct examination.

Q. What do you consider a fair value of a strip of 40 feet on either side of that railroad track through the 185 acre tract, and 30 feet through the small tract on either side taking off for railroad purposes and depriving the farm permanently of it for railroad purposes, what do you consider the damage to the farm valuing it ~~for~~ at \$2000.00.

Excepted to because irrelevant and immaterial and inadmissible for the purpose of contro^{dick}ing or varying the deed between the parties, the contract being one of hazzard.

James W. Orr

A. If it had been my farm, I would not have had them take the extra 40 and 30 feet for less than \$150.00, as it took some very valuable land in, taking off part of the garden there.

Re-cross examination.

Q. Where did Chas. Pennington's dwelling house stand with reference to the boundry, I mean east or west along the right of way?

A. It was near the west side of the boundry, and perhaps not more than 500 feet from the west line of the 185 acre tract, the Russell land.

Q. From the said dwelling house eastward what kind of land is the strip of land in controversy as to its fertility and adaptation to cultivation?

A. Some of it can be cultivated very well, and there is a little patch on the north side there a little swampy through the land, but there is dry land through there, and on the west there is dry land.

Q. Is it not broken and uneven a considerable portion of it through the 185 acre tract on both sides?

A/ Of course it is a little in patches, and in patches it is not. Over on the south side where it goes through a grass field ^{it} and takes in some fine land.

Q. I will ask you if the land there immediately in the valley is not white sand and a poor quality of land?

A/ Of course some of it is, may be right on top of the summit there it is a little that way.

Q. When you get back from the right of way on the ridge side is not the ridge land more productive than the land along the right of way, and more productive on the mountain side?

A. No sir, I do not know that it is ~~on the mountain~~ much on the ridge side, it might be a little more productive on the mountain side.

Q. You say you think the plaintiff is damaged \$150 by the loss of the strip of land in controversy it being taken for railroad purposes I will ask you what this strip of land is worth per acre compared with the entire boundary per acre at the price paid by the defendant to the plaintiff for farming purposes.

A. I believe that it is just about an average with the boundary at the price paid. ^{per acre}

And further this deponent saith not.

Signature waived.

The day 50cts.

David M. Pennington another witness of lawful age being duly sworn deposes and says:

Q. State your age residents occupation and relationship to the plaintiff.

A. I am 38, live at Ocoonita, and ~~farm~~ and saw mill, brother of the

plaintiff and a brother in law to the defendant.

Q. I will ask you to state how long you have been acquainted with the tract of land which your brother Chas. sold to Mr. Fleenor?

A. I have known it all my life.

Q. I will ask you to state what you would consider a fair value of a 40 foot strip of land running through the entire two tracts along the right of way for the L. & N. R. R. out side of a 40 and 50 strip on neither side of the track taking the whole value of the farm at \$2000.00?

A. I would consider it worth \$100.00 any way taking it out thatway.

Q. Do you know anything of the contract between Mr. Fleenor and your brother Chas. as to the number of feet which your brother represented to Mr. Fleenor that the railroad company owned on either side of the track at the time they were trying to trade or negotiating the trade?

Excepted to as irrelevant and immaterial and inadmissible the deed showing the contract between the parties.

A. I heard a conversation about the right of way, but do not know whether it was before or after the trade. Chas. said they only had sixty feet, and before that Jeff and Emory^{had} looked at the records and found that it was 100 feet. They were talking there about it, and Chas. said he did not think they would ever fence the other part, as they had but in their cattle guards at 60 feet. Brother Jeff and Mr. Fleenor took a tape line and measured to where the 100 feet would come to, and what they would take in and they took in the old shop.

Cross examination by Orr.

Q. You stated on your examination in chief that you think the taking of the strip in controversy damaged the tract of land \$100, I will ask you to now state what you think the strip in controversy is worth per acre compared with the balance of the boundry at the price paid for the boundry at \$2000.00 with the buildings and improvements taken off

at what they are reasonably worth?

A. I do not believe the land would be any more valuable there than the rest of the land, but taking it out in the shape it is, I would not want it off for a right smart more, and I think \$100 is as little as it ought to be placed at.

Q. How far is the dwelling house in which your brother Chas. lived from the right of way, that is the 100 feet recently fenced in.

A. I guess it is about 150 feet from the right of way up to the house.

Re-direct examination.

Q. I will ask you to state if you can about the time of the year it was when Mr. Fleenor and Chas. Pennington had the conversation at the shop and measured the right of way, and by way of refreshing your memory as to the time I will ask you to state if ^{it} ~~is~~ was not soon after the election in November?

Excepted to for the reasons above stated.

Orr.

A. It was late in the fall, it must have been the latter part of October or the first of November.

Q. Do you remember anything ~~that~~ that day being said about writing to the railroad company as to whether they would fence all their right of way through that land?

A. I remember something was said about writing to the railroad company about fencing the right of way, but do not remember what.

Q. Do you remember anything that was said about Judge Duncan in the conversation?

Excepted to for the same reasons stated above.

J. W. Orr.

A. Chas said if they had any more than 60 feet that Judge Duncan made it himself.

And further this deponent saith not.

Signature waived.

One day 50 cts.

*The foregoing deposition of H. J. Pennington & David M. Pennington was taken
and sworn to before me this 30th day of January 1906.
R. E. Brown. N. P.*

W. E. Flenner.

Atts. Depositor.

Chas. Pennington.

Filed February 14, 1906.

J. H. Ewing,
Clerk.

W. E. Pennington 50¢

David M. Pennington 50¢

H/ C. Jospyn another witness of lawful age being duly sworn deposes and says. *for Deft. Feb 1st 1906.*

Q. Do you remember preparing a deed by which Chas. Pennington sold his land near Ocoonita, Virginia to W. E. Fleenor,

A. Yes sir, I remember writing the deed.

The introduction of this witness at this time and for this purpose is excepted to because it is evidence in chief and the defendant having closed his evidence in chief the introduction of the witness is out of order.

Over for Plff.

Q. Mr. Pennington states in his deposition in this case that you and Mr. Fleenor and himself were in the room for the purpose of writing the deed and that you had written the deed as far down as the description and instead of writing the number of acres to be conveyed by the deed that you said in as much as we are not certain as to the number of acres that are taken out of the land for the railroad right of way we had better write it, "this land is sold by the boundary and not by the acre" in order to save time and trouble in the future. I will ask you to state whether or not there was anything at all at any time during the negotiation of the trade said about the railroad right of way in your presence, at the time of the writing of the deed or at any other time?

A. My recollection is, that Mr. Fleenor and I went ^{up} ~~down~~ together to Mr. ~~Pennington~~ Pennington's and that Mr. Pennington's wife was a little obstinate as to selling the land, and after a while she agreed to make the deed, and we had two or three talks in connection with the deed, and Mr. Pennington was very uncertain about the number of acres that he owned, and he seemed ~~to~~ not to know the boundary lines, and I suggested that the best way to do, as Mr. Fleenor knew the corners, that they sell the land by the boundary and not by the acre, but as to the railroad right of way being mentioned at all I do not remember it. I do not think there was any one else in the room much of the time except Chas. Pennington his wife and myself and Mr. Fleenor, and we three were there most of the time together.

Q. If there had been a question raised at that time with reference to the width of the right of way, and the reason for stating in the deed that the land was to be sold by the boundry and not by the acre was to illiminate any trouble ~~trouble~~ as to the said right of way, do you not think you would have remembered that as the reason?

A. I certainly would have remembered it, as I was the one who suggested writing the deed by the boundry and not by the acres, and this was done because he was not certain as to the number of acres that was contained in the boundry?

The foregoing question and answer are excepted to for the reasons above stated and for the further reasons that the deed between the parties shows the contract and can not be varied or contradicted by any oral statement or understanding than ~~is~~ expressed in the deed/ and the deed shows a contract of hazzard?

James W. Orr. *for Peff.*

Cross examination by Orr.

Q. How did ~~you~~ happen to go to write the deed, or did any one come after you?

A. I believe I received a letter from Mr. W. E. Fleenor asking me to come over and write a deed. He did not come after me, neither one of the parties came after me but I got news to come and I think it was by letter that they ordered me to come and write the deed. I am not certain which one of them wrote to me.

Q. Do you remember about what time of the day you got there?

A. I think it was about 10 o'clock, I remember we stayed there for dinner.

Q. Where was Mr. Pennington and Mr. Fleenor when you arrived?

A. I believe I struck Mr. Fleenor there about Ocoonita, and we went ~~down~~ ^{up} to-gether, that is my recollection about it.

Q. Do you know anything about what passed between the parties in reference to their trade before you got there for the purpose of writing the deed?

A. I only know what Mr. Fleenor told me as we went on up there?

I did not hear anything that passed between them, the only difficulty that seem to be was Mr. Pennington's wife, as she objected to writing the deed for a while, and before I went to writing the deed they called her in and asked her what she was going to do?

Q. If I understand you correctly the trade seemed to have been made and agreed upon between the parties and that Mr. Pennington's wife hesitated about joining in the deed?

A. That was my understanding about it.

Q. Then you wrote the deed as they requested or directed that it should be written did you?

A. I did as they agreed upon how the deed should be written.

And further this depoanant saith not.

Signature waived.

One day 50 cts.

W. E. Fleenor being reintroduced in his own behalf and being duly sworn deposes and says:

Q. Chas. Pennington in his deposition in answer to a question propounded to him by his counsel in this case said that he stated to you in reference to the right of way that he was not positive as to the number of feet that the railroad company owned on either side of the track, but he thought that it was only 60 feet. I will ask you to state whether or not Mr. Pennington in any way qualified his representation as to the number of ~~xxxx~~ feet contained in the right of way, or did he say positive the number of feet contained.

This question and any answer thereto is excepted to because evidence in cheif, and all others that ~~are~~ evidence in cheif are excepted to, because the defen dant has already stated in his deposition heretofore taken on previous examination as to what occurred between him and the plaintiff with reference to this matter. *and the deed shows a contract of 100 feet.*

A. His statements about the right of way were always positive, there was nothing indefinite at all about it, as I stated before he

stated positively as to the number of feet in the presence of the section crew, and was as positive as could be, and he also stated it positively to me before we arrived there where they were working.

Q. As a special inducement to you to take him up on his offer of the land at \$2000.00, did he not show you a particular piece of land within the 60 foot strip disputed, where he said to ^{you} ~~be~~ that there ^{you} would have a chance of selling to the railroad company a certain portion of land at a good price to be used as construction material or something of that kind?

Excepted to because in conflict with the deed and because ~~the~~ evidence in chief, and because no foundation has been laid for this question in cross examination of the plaintiff in his deposition, and because time and place is not fixed. J. W. Orr *for Plff.*

A. I can not say that he did that as a special inducement for me to purchase the land but he did do it just as we left the section men where they were filling, ~~and~~ there was quite a cave inside of a curve near the track, this was where we stopped, and he gave the section foreman some direction as to where the right of way extended, and when we passed there he stopped and pointed to that place and said there is a chance to sell a strip of land at your own price or at a big price, as they talk about moving the track over on the north side in order to get rid of the washes.

Q. I will ask you to state whether or not you have read Mr. Pennington's answer to question #3 in reference to how it happened ~~that~~ that it was stated in the deed that the sale was by the boundary and not by the acre?

A. Yes sir, I have.

Q. I will ask you to state if there was anything said at the time he speaks of in his answer in Capt. Joslyn's presence as to the railroad right of way or about the width of it?

Excepted to as being inadmissible being in conflict with the deed. James W. Orr. *for Plff.*

A. The railroad right of way was not mentioned that day at all in Capt. Joslyn's presence.

Q. Now give your explanation as to why it was stated in the deed that the land is sold by the boundry and not by the acre.

Excepted to because evidence in cheif and intended to vary or explain or controdickt the deed, and the deed speaks for itself, and the language of the deed covers all grounds. and all reasons why is was so inserted.

J. W. Orr. *for Plff.*

A. My recollection about it is about this? Capt. Joslyn wrote the deed and then stopped and asked us if we had surveyed the land or had it surveyed, and if we had agreed about writing it by the boundry or by the acre, and one of us spoke up and said that we had not surveyed it, and stated that we had agreed to convey it by the boundry, and he then stated he would write it that way when he came to the proper place for it in the deed.

Q. Then there was nothing said at all that ~~day~~ this expression by the boundry was put in in order to explain the uncertainty as to the width of the right of way?

Same exception as above. J. W. Orr *for Plff.*

A. No sir, the right of way was not intimated or mentioned either by Mr. Pennington, my self or Capt. Joslyn.

Q. It has been stated by Elkana Flanary, C. E. Flanary and Wm. Sprinkle that the forty foot strip on either side of the ~~rail~~road right of way in controversy, would hardly be worth as much per acre on a average as the whole tract of land taken together, and that the timbered land is more valauble? I will ask you to state what is your opinion as to the ~~comparative~~ value? of this land and that on the mountain and ridge side that is not timbered.

Excepted to because evidence in cheif and the witness in his deposition heretoforehas testified on this identical point.

J. W. Orr. *for Plff.*

A. If you compare it that way it would be worth two or three times as much at least three times as much as the timbered land on the mountain side and ridge side it would not be worth so much compared with that, but still it would be worth considerably more. If you compare it with the average timber taking to the top of the ridge to the 12 1/2 acre strip it would be worth at least twice as much per acre.

Q. Have you put any of this land upon the market and if so, what prices have you been getting for ~~this~~ the different kinds of land situated there.

Excepted to because irrelevant and immaterial.

J. W. Orr, *for Plff.*

A. Yes, I have sold different parts of that land, and I have sold off some of that mountain timbered land as low as \$3.00 per acre, from three to five dollars per acre, and the highest I have got for any of it is \$10.00, the lowest price I have had for any of the land including down next to the railroad, the cleared land is \$15.00 per acre., and the highest is about \$22.00, but I could not say positive as we could not get at the number of acre accurate enough to know exactly what it would be.

A. Is it possible to sell that mountain side or ridge side for as much money as the land right along the railroad that is cleared and more level

Excepted to for the same reasons.

J. W. Orr, *for Plff.*

A. It has not been possible for me to do so, I have just tried to sell my onhalf interest in that 12 1/2 acre strip for \$50.00 but have not succeeded.

Q. I will ask you to state if you have made a diagram of the ~~grounds~~ land purchase by you from Mr. Pennington, showing the location of the shops, road and the railroad right of way your residence and out buildings &c.

A. I have.

Q. Did you make this as correct~~ay~~ as you could without the use of surveyors instruments to obtain the exact measurements, and if so, please file the same with your deposition marked "Diagram".

The filing of said pretended diagram is excepted to because irrelevant immaterial and inadmissble, evidence in cheif, and because too indefinite, uncertain and poorly gotten up to be of any aid to the court or any body else in determining the question~~at~~ issue. The location of the shop on the diagram is in the teeth of the evidence already introduced in the cause.

J. W. Orr. *for Plff.*

A. Yes sir, and I file the same as requested marked as requested.

Q. I see that you have marked on the plat 130 feet from the railroad right of way fence to your house, 130 feet from said fence to the barn 60 yds/ from the barn to the ~~shop~~ public road, and 90 yds from the barn to the house, I will ask you to state how you obtained these measurements.

to be cause in chief & irrelevant & immaterial
Excepted ^{to} for the same reasons stated above.

J. W. Orr. *for Plff.*

A. I ~~obtained~~ the distance from the house and barn to the public road by counting the railroad rails in front running parallel with the fence and I obtained the other distances by counting the fence panels that run in the opposite direction.

Q. Do you know the length of the rails from the railroad and the length of the panels?

Excepted to for the same reasons?

J. W. Orr/ *for Plff.*

A. Yes sir.

Q. What are they?

A. The railroad rails are 33 feet, and the fence panels, the plank ones are 14 feet, while the rail fence I figured to be a rod to a double panel.

Q. How close to the new fence that the railroad company build was the ~~public~~ shop which you had to move?

Excepted to for the same reasons. *Or for Plff.*

A. The northeast corner was very near the line, so near that they

~~had to tear off that corner in or~~
had to tear off that corner in order to construct their fence one foot on their own side.

Q. Where did you move the shop to?

Excepted to for the same reasons? Orr, *for Plff.*

A. About three or four hundre yards south of where it sat, across the railroad.

Q. What ~~did~~ it cost you to remove the shop and carpenter's house to the place where you moved it?

Excepted to for the same reasons. Orr, *for Plff.*

A. I could not say positively as to that, as near as I can get at it now it cost me about \$15.00, that does not include any damage of course in taking off the roof.

Q. How much did it damage the building to move it.

Excepted to for the same reasons. Orr, *for Plff.*

A. Not less than \$10.00

Q. It has been stated by some of the witnesses of the plaintiff's that the only thing to do to make you another road out to the public road would be to build a fence, and that the land between your house and the public road running along parallel with the railroad company's fence is practically level and no grading or work would be required, I will ask you to state if you have examined the ground and if so how is it?

Excepted to for the same reasons stated above. Orr *for Plff.*

A. If you make a road along by the railroad company's fence it is steep and would have to be graded, but putting it higher up it is rather level.

Q. How much would it cost you to build a fence and prepare as good road as you had before?

Excepted to for the same reasons. Orr, *for Plff.*

A. I have not calculated that it all, but I am confident it would not stop short of \$25.00, it would depend of course, on the kind of fence you would make as to what it would cost.

Cross Examination by J. W. Orr/

Not waiving the objection to the introduction of this witness now ^{and his} to ^{noted} evidence heretofore ~~given~~ the counsel for the plaintiff ~~here~~ and now proceed to cross examine the witness.

Q. Was not the road or pass way spoken of by you simply a private pass way from the house out to the public road?

A. Yes sir, it was just simply a pass way from the house ~~to the~~ shop and barn out to the public road.

Q. Then it was not a public road?

A. No sir, it was never established by law, but it was used by the public in going out to the shop &c.

Q. To open up a new pass way and inclose it, you would only have to build one line of fence would you? ^{not}

A. Yes sir, it would just take one line of fence to make a lane.

Q. Could you not place a gate at the public road, and avoid erecting even one line of fence?

A. You could do that but it would be very inconvenient about taking stock or anything through there, and the garden would be open that way, and would be more expensive in the long run than to build a fence.

Q. You say you think it cost you \$15.00 to move the shop to where you placed it, what would it have cost you to simply have moved it off the right of way on to your own land?

A. I think that would have cost about \$5.00 to moved it all together without tearing it down.

Q. You gave some measurements or distances in your diagram that you have filed in which you state that you counted a double panel of rail fencing as being one rod in length, what was the length of the rails constituting this rail fence?

A. 11 feet.

Q. Is it not a fact that a rail fence built out of rail 11 feet long with proper worm and proper lap is only about 15 feet from lock to lock in a double panel?

I never did measure to ascertain, I was just calculating that from an old saying or custom of counting that way.

Q. You have stated that you have sold some parcels off the boundary of land purchased by you from the plaintiff, I will ask you to state what parcels you have sold, that is, the amount contained in each and the price per acre for each parcel realized and where the same was situated.

A. That I sold at \$7.00 is on the north part on the mountain, it is the northern boundary and extend from the eastern end out about 2/3 of the distance of the farm, on the northern boundary it was only timbered land, it would have about averaged with the mountain land as to smoothness and as to the timber on it. we measured the piece and counted about three acres. I sold two acres at \$5.00 per acre and it is situated out near the northeast corner, and adjoins the field shown in the map north of the County road. It was partly timber but most of the timber had been cut off and it is rough land. Then I sold 5 3/4 acre immediately adjoining this two acres, but extending all the way to the north boundary on the mountain and south down to the county road at \$10.00 per acre, and it was all timbered land, and I believe a little bit rougher than the average of that mountain. This was as rough as the two and three acre pieces but a little more timber; then I sold all east of these parcels, which included about two acres above the county road there, in this sale, and extends across the valley and up the north side of Poor Valley ridge to the southern boundary of land which includes the 25 acre near the top of the ridge. this was sold at \$15.00 per acre and I believe it figures out about 40 acres, then there is a strip I have not sold which extends up to the three acres above mentioned on the mountain and clear across the valley and up the Poor Valley ridge to the 25 acre strip, *Containing about 40 acres.* and then I not only own this strip but I own the 1/2 interest in the 25 acre piece. Then west of this strip which I still own, I sold

another strip running about parallel with these strips just mentioned and ^{across the valley} contains about 40 or 45 acres at \$15.00 per acre, then going west and adjoining this ~~land~~ ^{do} mentioned strip I sold the entire remainder of the boundry in two parcels, on the south west corner I sold about ten acres, less the timber right, at \$10.00 per acre, then the remainder of all that western part ~~I~~ ^I sold ~~that~~ ^{50 acres,} as near as I could count ^{at} per acre ~~at~~ \$22.00, containing about 50 acres.

Q Have you or not cut and used and removed and disposed of a consider amount of timber from off this boundry of land since you purchased it from the plaintiff, and if so, state about how much and about what sum or sums you have realized from the same?

A. I have taken off considerable timber off the land, but I do not know how to estimate it or how to get at the different kinds.

I can not state the quantity of each kind of timber but I think I can state with reasonably accuracy the total number of feet of timber used off the land which is something near 100,000 feet.

worth about \$2.00 over and above expense. I have cut and disposed of something like 50 cords of extract wood, worth 75 cts per cord net, then I have the timber reserved on the piece sold on the Poor Valley ridge side above mentioned.

Q. Was there any fence on this boundry of land that had been put there by the railroad company at the time you purchased the land, and if so, where was it situated.

A. There was some fence on the south side of the track and beginning on the east end and extending up I guess 200 yards.

A. Was that all that was there and put there by the railroad co. at that time?

A. Yes sir.

Q. Has this line of fence since been removed by the railroad company?

A. No sir, it is just as it was built.

Q. How far is it from the center of the railroad track?

A. It looks to be about 60 feet just to pass along there, but I think it has been said to be about 80 feet or that it was started 80 feet from the east end.

Q. Did you not notify or request the railroad company to fence their right of way through this boundary of land after you had purchased the same?

A. I did.

Q. Were there any drain ditches cut by the railroad company on the slopes through this boundary of land and if so where?

A. Yes sir. What they call surface ditches all along over more than one half of the right of way there. there is two of them that is out something like 80 feet one of them may possibly be 90 feet through the 185 acre tract then it lowers down to 60 feet, along by the house it measures just 60 feet to the outside edge of the ditch.

Q. I will ask you to give as near as you can what per cent of 100,000 feet of lumber manufactured from timber cut from this land was poplar?

A. About 12 1/2 or 15 per cent of it was poplar I guess.

Q. What per cent of it white oak?

A. About 10% I guess.

Q. What kind of timber constituted the residue.

A. What is called red oak with a little black gum and chestnut, the chestnut and black gum would not have exceeded 5 %.

Re-direct examination by Pennington.

Q. You stated above that you noticed some ditches on the railroad right of way and within the 60 feet, I will ask you to state if Mr. Chas. Pennington was along at the time, and if so, what was said about it by you and him?

Excepted to because in conflict with the deed and the contract of hazzard. Orr. *for Plff.*

A. We passed over one of these ditches the day I purchased the land, and in conversation concerning the width of the right of way

with Chas. Pennington I asked him why is was that they cut those ditches so far back, and he said that they cut them before he made the contract with the company for the right of way, they sent some Italians there to cut the ditches and they cut the ditches, before he could get Duncan there and made the agreement for the right of way, and then the rest of them were cut at their proper places. And further this deponant saith not.

Signature waived.

The foregoing depositions of H. Q. Joslyn
and H. E. Fleener were taken and sworn
to before me on the 1st day of February, 1906.

A. O. Brown, U. P.

W. E. Fleenor

Deposition

Chas Pennington

Filed February 14, 1906.

H. E. Curing,
Clerk.

Atty. Gen.

H. C. Jolyon. 500

W. E. Fleenor. 500

The deposition of Chas. Pennington taken before the undersigned Notary Public in and for the County of Scotts Bluff, and State of Nebraska, by consent of parties at Mitchell, Neb., on this the 12th day of December 1905, upon written interrogatories and cross interrogatories, which deposition is intended to be read as evidence on behalf of the plaintiff in a certain suit in Chancery pending in the Circuit Court of Lee County Virginia in which the said Chas. Pennington is plaintiff and W. E. Fleenor is defendant.

The said Chas. Pennington a witness of lawful age, and being duly sworn deposes and says: In answer to interrogatories propounded by Plaintiff's Counsel:

Q.1-- Please state your age, residence and occupation?

A. I am 46 years of age. I reside at Mitchell, Scotts Bluff County, Neb. My occupation is that of farming.

Q.2-- When you sold the land owned by you, on which you resided at the time, to the defendant, October 6th, 1904, what was said by you and the defendant about the railroad right of way through said land when you were making the trade?

Ans. He asked how much right-of-way did the railroad have through the 185-acre tract. I told him I was not positive, but I thought it was 60 feet on each side of the track, and I feel positive that the foregoing was the only and all the reference made, on the occasion in question, to the matter of the railroad's right-of-way, and no reference, whatever, was at that time made to the said right-of-way over the 32-acre tract.

Q.3-- How did it happen that it was stated in the deed that the sale was by the boundry and not by the acre?

OBJECTION: This question and any answer thereto is objected to because parol testimony can not be introduced to vary or alter the terms of the written instrument.

R. L. Pennington for Deft.

Ans.

Myself, W. E. Fleenor (the defendant herein) and H. C. Joslyn, (a Notary) were present in the room for the purpose of drawing up the deed in question. When Mr. Joslyn was writing the deed and had written

in the description (instead of writing simply the number of acres supposed to be conveyed by the deed, as is customary) he said inasmuch as we are not certain how many acres are taken out of this land by the railroad's right-of-way, we had better write in it, "This land is sold by the bounds and not by the acre, in order to save trouble in the future." And as Mr. Fleenor made no objection at that time, the deed was written according to the aforesaid suggestion.

Q.4-- When did defendant first make complaint to you about the right of way being more than sixty feet, and tell what was then said between you about it?

Ans. On or about election day 1904, the defendant came to my shop and told me he had examined the record and found that the right-of-way was 100 feet wide on each side of the track, instead of 60 feet. He measured and found that the shop was on the right-of-way, and he said "It will take my shop," and I told him he would be allowed to remove the shop, and he said he was afraid to ask the railroad to fence the right-of-way for fear they would fence the whole 100 feet. But at that time he made no complaint against me, nor intimation that I should reduce the purchase price of the land. Nor did I offer to do so, and at that time he did not refer to the right-of-way over the 32-acre tract.

Q.--5 Did you at that time or any other time agree to give him an offset on account of the right of way being more than sixty feet, or leave the matter open for future adjustment between you in any manner?

Ans. I did not.

Q.6 Did you and the defendant at that time or at any other time agree for him to ask the railroad company to fence their right of way and determine the matter, and did you leave the matter open for that purpose?

Ans. I did not.

Q.7 Did the defendant ever intimate to you that you had misrepresented the matter to him in regard to the right of way and that he was entitled to an offset on that account, if so, when ^{did} he make such complaint and claim.

Ans. The note on which this action is brought became due January 1st, 1903; and the Powells Valley Bank, of Jonesville, Va., notified him, and he then paid it all but the \$200⁰⁰ in question.

The said Bank then notified me that the defendant was holding the \$200⁰⁰ as an offset. And sometime, in the following month of February, 1905, I received a letter from the defendant, in which for the first time the defendant intimated to me that he claimed an offset on account of the railroad right-of-way being 100 instead of 60 feet on each side of the track. And in that letter for the first time the defendant made complaint that I had misrepresented the matter to him. And in that letter was the first time that he ever intimated or suggested, or complained or asked for a set-off, or that the purchase price of the said lands should be reduced.

Q.8 Where did you reside at the time he made this complaint, if he made any?

Ans. At Mitchell, Scotts Bluff County, Nebraska.

Q.9 When did you give the defendant possession of the land you sold him?

Ans. In October, 1904 the defendant went onto the land and began to clear a part of it. On the 10th of the following November, he was given possession of the dwelling house, and of all but about 20 acres of the 188-acre tract. On January 1st, 1905, the defendant was given complete possession of all the land I sold to him.

Q.10 Did you then remove from the premises and where to, and have you lived in Nebraska ever since?

Ans. I removed from the said premises on November 10, 1904 and went from there to Mitchell Scotts Bluff County, Nebraska and have resided at the latter place ever since.

Q.11 At the time you made the sale to the defendant where did he reside, and how long had he been living there, and how far was this from the land you sold him?

Ans. About one mile west of the said premises. He had resided at that place for about 10 years, then moved to Louisville, Kentucky, where he lived for two or three years, and then moved back to the same place again, and had lived there about a month before he bought the land in question from me.

Q.12 The defendant in his deposition states that he complained to you about the right of way about the time of the election in November, 1904, how was this?

Ans. At that time he made mention of the fact that the said right-of-way was wider than I had stated at the time of the sale to be my belief. But he did not at that time complain that I had misrepresented the matter, or suggest, intimate, or claim that any set-off was thereby due to him, or that any reduction, on that account, should be made in the purchase price.

Q.13 And he further states on that occasion and in the presence of you r brothers, Jeff and David Pennington, you expressed surprise at the right

of way being as much as it was, and that you said that Judge Duncan was the meanest man on earth or something of that kind, and that he had raised the deed on you and that you had signed it without reading it &c. now state how this was and did any such conversation occur?

Ans. I have no recollection of having made any such statements as those now in question. But I may have done so. And it is a fact that I signed the deed granting the right-of-way to the said L. & N. R. R. without having read the same.

Q. 14 Did you or not pay the taxes on the land you sold the defendant and your property and capitation taxes for the year 1904, if so please file the tax tickets with your deposition, marked "Tax Ticket"?

Ans. I did not pay the taxes in question, since at the time I left the said premises I had received no notice of the existence of the said taxes, from the county treasurer or his deputy.

Q. 15 What do you consider the value of the strip of land about which the defendant complains and which I understand is forty feet wide on both sides of railroad track through the 185 acre tract, and thirty feet wide on both sides of the railroad track through the thirty two acre tract, compared with the entire land you sold him at the price of \$2000.00, and which strip contained perhaps about seven acres, and give the quality, and nature of the land?

Ans. Most of the land in question was the poorest land on the place, being boggy, low and swampy land, and sassafras knolls, and practically useless for farming purposes. There was no timber large enough to saw into lumber on the said strip of land. If I owned the premises back and wanted to buy this strip of land now in question I would not be willing to give more than \$4.00 an acre for it, on the basis of the price per acre in this contract aforesaid.

Q.16-- At the time you sold the land to the defendant, did you or not have any fraudulent intent to sell him any land in the boundries described in your deed not owned by you, or was it the intention to sell him just such land in those boundries as you did own?

The foregoing question is objected to because not at issue and because the intention must be determined from the instrument itself.

Pennington for Deft.

Ans. I did not mean to defraud him in any way. I meant to sell him only ^{just} such lands within said boundaries as I did own.

Q.17 Was it or not talked over between you and defendant and agreed upon between you that as you were not certain as to the width of the right of way that the deed would be made by the boundry and not by the acre, and this was done, and the deed was satisfactory to the defendant and received by him in that condition without objection?

The foregoing question is objected to because leading and because the words "By the boundry and not by the acre" is to construed by the court and not the witness.

R. L. Pennington for deft.

Ans. As hereinbefore shown the matter was talked over at the time of the sale and when the deed was being drawn up we talked the matter over and it is my recollection that it was mentioned at that time that we did not know for sure what was the width of the ~~same~~ right-of-way. And it was because of the mentioning of the latter fact that it was suggested that it be written in the deed "This land is sold by the boundry and not by the acre," to which suggestion I assented and the defendant being then present, and hearing the said suggestion made, made no objection thereto, whatever. Accordingly the said statement was written in the deed, and the deed was then delivered to and received and accepted by, the defendant, herein, without any objection whatever, and in my presence the defendant then handed the said deed to the Notary N. C. Jackson, and did then request him to take it to the county clerk's office and have the said deed recorded for him.

(11)

CROSS-EXAMINATION

Q.1-- At the time you made the sale to Fleenor and while you were negotiating the trade, did you not then think, and so state to him that you owned the land to within sixty feet of the rialroad through the large tract, and to within fifty feet of the railroad through the small tract?

Ans. I told him as I have done stated above, that I was not positive as to the width of the right-of-way through the 185-acre tract, but I thought it was 60 feet. On the 32-acre tract there were no questions asked as to the width of the right-of-way whatever.

Charles Pennington

State of Nebraska,

County of Scotts Bluff

} S. S.

I

G. E. Mark,

a Notary Public in and for the

County and State aforesaid do certify that the foregoing deposition of Chas. Pennington was taken subscribed and sworn to at the time and place and for the purposes in the caption mentioned.

Given under my hand and official seal this the 12th
day of December 1905.

G. E. Mark, N.P.

Chas. Pennington

551 N. 2nd St.

W. E. Gleason

Filed Dec. 18, 1905.

H. B. T. Goring, Clerk.

Chas. Pennington

The depositions of C. E. Flanery _____

_____ taken by consent of parties at the law office of James W. Orr, on the 24th day of January, 1906, which are intended to be read as evidence on behalf of the plaintiff in a certain suit in Chancery pending in the Circuit Court of Lee County, Virginia wherein Chas. Pennington is plaintiff and W. E. Fleenor defendant.

James W. Orr for Plaintiff.

Present:

R. L. Pennington for Deft.

C. E. Flanery being a witness of lawful and duly sworn deposes and says:

Q. Please state your age, residence and occupation?

A. I am 45 years old, live at Jonesville, Virginia and am a farmer.

Q. Are you acquainted with the land in Poor Valley near Ocoonita sold by the plaintiff to the defendant, and if so, please state the extent of your acquaintance of the same.

A. I have been through the land at different times, for several years, and the other day I went over the land for the purpose of looking at it.

Q. Please state what you consider the value of the strip of right of way in controversy which is said to contain about seven acres, per acre, compared with the price paid by the defendant to the plaintiff for the entire boundary, which boundary is said to contain 229 1/2 acres including the right of way, and the purchase price being \$2000.00?

A. I believe that it figures out about nine dollars per acre does it not? My way of valuing it, considering ~~that~~ the two strips on each side of the right of way, I do not consider it as valuable as the land a little farther back, nor as valuable as the timbered land, taking into consideration the timber there and it being so near the depot as what it is. I consider the timber ^{land} on either side of the 22 acre tract as being worth as much as the cleared land on the said

tract owing to the fact that the buildings and improvements where the plaintiff lived is on the cleared land. I consider the timbered land on the 185 acre tract worth as much or a little more per acer then the cleared land on said tract. Now upon the whole I consider the strip in controversy worth \$8.00 per acer when compared with the boundry at about \$9.50 per acre. There are swampy places all along the track, and the water is caused to stand in places by the railroad putting in their fills and making their track. It is swampy along there compared with the other land, as the railroad is build in the lowest part of the valley. And there are some uneven places along that land. I did not go over the entire strip, but I was at each end of it, and had a genral view of it, and then I have passed through the boundry heretofore. I have been in the dwelling house where the plaintiff lived, and I have been near the barn, tho not in it, and from my observation of the buildings and the improvements on the land the orchard &c, these improvements ought to be rated at about the sum of five or six hundred dollars, in the price of the land.

Q.)_ If the purchase price of the land was \$2000.00 and the buildings on the land out-side of the strip in dispute was worth \$500.00 what would that leave the price of land per acre for the boundry?

A. That would leave \$1500.00 for the land, and if there is $21\frac{1}{2}$ acres out side of the entire right of way, at the price of \$1500.00 for the land, would be a little over seven dollars per acre.

Q. If the price of the land then, out side of the buildings and improvements was \$7.10 per acre what is the value of the strip in controversy per acre compared with this price per acre for the entire boundry?

A/ I consider it worth \$7.10 through the 32 acre tract, and through the 185 acre tract I would put it from \$1.50 to \$2.00 per acre less than for the 32 acre tract, I would say from \$5.10 to \$5.60 per acre. as there is more timber on this tract than on the 32 acre tract.

A. State whether or not you observed that there had been timber cut and removed or used off this land recently?

Ans: Yes sir, there was a man cutting there that day, he was cutting

extract wood, I believe. I observed that there had been timber cut on the Pennington land.

Cross examination by Mr. Pennington.

Q/ I will ask you to state if you are not used to living upon land of quite a different character then that in controversy?

A. I am.

Q/ Has not all your experience as a farmer been with the blue grass and Powells valley alnd, and none with the Poor Valley country land?

A. My principle life has been farming in the Powells Valley, and I have not farmed any in the Poor Valley.

Q. And to one who has been used to Powells Valley land does it not appear to him that the Poor Valley alnd is rather poor and worthless for farming purposes?

A. It appears that way to me.

Q/ Not having had any experience with Poor Valley land, and lands of that character do you believe that you could make up and give a fairly accurate estimate as to its value?

A. Basing all my judgment on the crops that I have seen grown on this character of land I believe I could give a very fair evalue of its worth.

Q. I will ask you to state whether or not you ^{have} noticed the market prices of land in general throughout the county of Lee from the year 1885 up to the present time, and state whether or not the price has been advancing or decreasing.

A. I have been watching the land business a little from that time up to the present, and my observation is that the land have increased in price from that time up to the present.

Q. As a general thing have not lands in Lee County, and especially along the railroad ~~xxx~~ advanced in price almost double to ~~what~~ it was preveous to the building of the Louisville & Nashville R.R. through this county?

A. Taking the land throught this Poor Valley and especially the timbered land seems to be worth a good deal more since the railroad has been built. All farming land is worth more since the construction of the railroad.

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Q. I notice upon the examination of the deed from Chas. Pennington and W. J. Pennington made of this particular right of way through the 135 acre tract that in February 1890, he sold this particular strip of farming land to the L. & N. R. R. Co., consisting of fourteen acres, at the price of \$250.00 Do you believe from your experience and observation that the value of this ~~kind of~~ land has increased or decreased in value from that time down to the present. or would you think it had held its own in the market price.

Objected to as irrelevant and immaterial.

J. W. Orr/

A. Taking it as a whole I do not consider the land worth as much now as it was then, considering the timber that has been taken off of the ~~tracts &c.~~ *land*

Q. As to this particular strip of land in contriversion, I will ask you to state whether or not in your opinion that the land is worth as much from the present marketable standpoint as farming land now as it was in February 1890?

Objected to because irrelevant and immaterial and inadmissible, the question being what the strip of land is worth compared with the price paid for the entire boundary.

J. W. Orr.

A. From my observation of the land I do not believe that it would be worth nearly as much for farming purposes now, as it was before the railroad was built, because there are places they had to fill in, or build up and it has caused swamps to form, and caused water to stand on the land that otherwise would perhaps not have done so.

Q. Did you notice where the railroad right of way, cut off a portion of the buildings, rails, or any thing else belonging to this tract which was within the disputed boundary.

A. I noticed a strip of land that had been cutoff lately by fencing that the railroad has lately built.

Q. Now the cutting off of this piece of land by the railroad fence did it not materially inconvenience and damage the rest of land, and if so, what amount of damage was done to the place.

A. I stated above that this would damage the rest of the thirty two acre tract thinking that the buildings were on the 32 acre tract, but

I am now informed that the 32 acre tract is west of this building and extends as far east as the cattle guards west of the house and buildings.

Q. To cut off this land which is in dispute at the house and cause the removal of the blacksmith's shop and carpenter's shop, and the taking away of the land at this point, would you not consider that it ~~xxx~~ damaged the house, garden and outlet to the county road, and if so, what would you regard that damage.

A. I consider that taking this strip long there by the house that it damaged the situation there where the buildings were to some extent, but I was not asked to assess that damage there as to the buildings and I did not put any estimate on it. It did in my opinion disfigure the location and the way of getting into the house and into the barn to some extent, and made it a little inconvenient to what it used to be since they have fenced that in.

Q. And does it not cause Mr. Fleenor to build a new road to give him an outlet to the County road?

A. Yes sir, he will have to make him a road ~~fromxxxxxx~~ so as to get ~~in~~

Q. If you had come thereto assess the damage to Mr. Fleenor ~~on~~ this building on a proceeding to condemn this particular land at that point for the railroad company what would you have said that the railroad company should justly pay Mr. Fleenor for the inconvenience he would have been put ~~to~~ by reason of taking that strip.

Objected to because irrelevant and immaterial.

J. W. Orr.

A. I would have to take a better view of the strip of land then what I have to answer that question, and put any estimate of damage on it. I considered he was damaged some but just what I would not be willing to say.

Q. What portion of the land did you look over that day when you valued it.

A We cross the ridge up at Champ Hamblins and stopped on the ridge side at the turn of the road above the bridge and valued that land on the Poor Valley Ridge side there, and then we rode on around and stopped there about the section houses and look at the land from that point, and then we viewed the land from the mountain side where Mr. Garret was getting out extract wood and we look at the timbered land, and came on down in the Poor Valley where Mr. Roberts was working getting out wood off a strip of land Mr. Fleenor had sold to him, and we talked to him about the land.

Q Did you see enough of the mountain side to make up a fair opinion as to what its value would be?

A I think we did.

Q How long were you over there?

A I guess we were there something like two hours/ We staid up on the mountain where Mr. Garrett was for about one hour.

Q Suppose you had bought this land, you contracted that the right of way was 60 feet from ~~either~~ the center of the track, and it turned out to 100 feet what would you have considered your damage by reason of the taking of the other 40 feet on either side of the road and taking into consideration the improvements, and other things, and the inconvenience of having the location down at the house disfigured and cut up as it is.

Objected to because irrelevant and immaterial, because the supposed case does not exist and the hypothesis is not well founded, the question and any answer thereto is therefore irrelevant and immaterial.

J. W. Orr/

A Not knowing how much fencing they have moved by the reason of the right of way, and not inspecting the house very closely I could not put an estimate of damage on it.

Re-direct examination by J. W. Orr/

Q If Mr. Fleenor was permitted to move in his fence and to move the shops &c/ do you consider that he was much damaged on that account?

A. I would consider he was damaged some, but as I have said heretofore to what extent I could not say.

A. Any way, taking into consideration the entire matter, so far as you are informed and from your personal ^{view} value of the premises and having been corrected in regard to this impression, ~~what~~ ^{of the} extent

of the two tracts of land, and as to the buildings being situated on the 185 acre tract instead of the 32 acre tract, I will ask you now to give your best estimate of the value per acre of the strip in controversy through the two tracts compared with the price per acre paid by Mr. Flee nor for the entire boundary.

A. I am just ^{of} the same opinion I was. I considered that the strip ^{in front of the house} is worth just about as much as any of the land, if I lived there, but if I was away from there I would not consider it worth so much per acre. Taking ~~the~~ ^{the strip} as a whole I would not consider it worth as much per acre as the entire boundary at \$7.10 per acre, I believe \$6.00 per acre upon the whole compared with \$7.10 for the boundary.

Q. You have been asked on cross examination something about the necessity of a new road. Please state whether or not Mr. Flee nor will have much to do for a new pass way in order to open it up.

A. He would have to make him a new road, but so far as making a road is concerned the land is comparatively level and there would be very little to do to open up a road.

Q. I will ask you if you were not born and raised in Lee County, and if you were not sheriff of this County for several years, and is it not a fact that you have been acquainted with the Poor Valley and Cumberland Mountain ^{lands} from your earliest childhood, and the nature of the land imbraced in the Poor Valley.

A. Yes sir, I was born and raised in Lee County, was sheriff four years, and have been acquainted with these land all my life.

Q. Please state what you consider the nature of the strip of land in controversy as to fertility, compared with the other lands of the tract both on the Poor Valley ridge side and the mountain side?

IA. I consider the land along the right of way worth less and harder to keep up^{there} than the land on the mountain side or ridge side, and is better class land on either side then that land, it would be more productive on the ridge or mountain side. I think the land on the mountain side more productive and ^{more} lastly than the strip in controversy.

Re-Cross examination by Pennington.

Q. Do you know anything of the value of the Blacksmith's shop and carpenters shop that was removed off the tract, and the fencing?

A. I was at the shop at once time, but what kind of a shop it was I do not remember and can not state its value/ and as to the fencing I believe it was rail fencing, but I could not be positive.

Q. Do you know how far he would have to build a lane to get out to the public road.

A. I would guess about 100 yards.

Q. To build a lane it would take about two hundred yards of fencing?

A. He would not have to build but one fence as the railroad fence is on one side of him.

Q. It getting to his house would he not have to pass through his barn yard?

A. I do not believe he would necessarily ~~would~~ as his barn is far enough north to prevent that.

Q. Any way he would have to pass his barn or near to his barn?

A. He would pass between his barn and the right of way to get to his house.

Q. Will this bring him to the front or back of his house?

A. It would bring him to the front of his house.

Signature waived.

And further this deponent saith not.

Met pursuant to adjournment at the same place January 26th, 1906.
Elkanah Flanary another witness of lawful age, being duly sworn deposes and says:

Q. Please state your age, residence and occupation?

A. 51 years of age, live at Jonesville, Virginia, and am a farmer.

Q. Are you acquainted with the land purchased by W. E. Fleenor from Chas. Pennington and on which the said Fleenor now resides?

A. I am, and have been there on and off and known it about 25 years.

Q. Have you recently been on said land and if so, when, and who were with you?

A. I was on it a few days ago in company with Chas. E. Flanery.

Q. Have you been informed as to the location of the strip of land or right of way that is in controversy in this suit?

A. I have.

Q. From your knowledge of the boundary of land sold by the plaintiff to the defendant, and the strip in controversy of said boundary contained 229 1/2 acres including the railroad right of way, and 212 1/2 acres excluding the railroad right of way, and the boundary was sold at the price of \$2000.00 what do you consider the strip of land in controversy worth per acre compared with the entire boundary at the price paid.

A. I look^{ed} over that farm the other day the best I could, taking ~~the~~ all into consideration, the timbered and cleared land, and I do not believe the land there in controversy, that is the land along the railroad track, or the land in dispute, worth as much as the land a little farther back from the track going toward the ridge and mountain. I do not consider that strip as useful as the rest of the land on either side, taking the timber into consideration from each side from the railroad right of way.

Q. From your observation of the buildings and improvements, ^{what} do you consider them reasonably worth?

A. As to the house I never was in the house, never was in Mr. Fleenor's yard, but as to the barn I have been through it two or three times,

and it seems to me to be a rather new barn. From the outward appearance and what I have seen of the barn &c, I consider the improvements worth from five hundred to five hundred and fifty dollar that is my estimate from my knowledged which limited as to the house.

Q. If the boundry of land was worth \$2000.00 and the improvements are worth \$500.00 that would leave the land worth \$1500.00 would it not?

A. It would.

Q. Then if the land contains $21\frac{1}{2}$ acres in the boundry outside of the railroad right of way, and that is worth \$1500.00 that would be \$7.06 per acre for the land would it not.

Objected to because leading and suggestive.

R. L. Pennington.

A. I have not calculated it.

Q. If the land is worth \$7.06 per acre for the boundry exclusive of the buildings what do you consider the strip of land in controversy worth per acer compared with that price for the entire boundry?

A. I would make some difference because, as I have stated I consider the land on either side, running up the mountain and ridge more valuable, and I would make a dollars or two difference any way. as the land on either side is timbered and useful and better land. I do not regard the strip as valuable as the other land.

Q. Then ~~at~~ ^{if} I understand you correctly you would consider the strip in controversy worth from five to six dollars per acre compared with the entire boundry. at \$7.06 per acre .

A. I would proportion it about that way.

Cross Examination by R. L. Pennington.

Q. How far do you live from the land in controversy?

A. It is something life four miles, I think.

Q. It is not nearer seven miles than four?

A. No sir, I think not. I never measured it, but I consider it about four miles, and I would not put is as much as five .

Q. Have you ever had any experience with farming the Poor Valley lands?

A. I never farmed any in the Poor Valley.

Q. Where is your farm land situated?

A. My home place is about 6 1/2 miles west of Jonesville, in Powell's valley.

Q. When did you last visit the land with a view of look over this particular land in dispute?

A. I could not tell the day, but it was just a few days ago, I believe it was one day last week.

Q. How long did you spend on the land?

A. We were there something like two or three hours. I could not say exactly.

Q. Did you look over the thirty two acre tract?

A. I can't say in regard to the thirty two acre tract, we were showed the boundry of the whole 229 1/2 acres and we look over the thirty two acre tract if it was embraced in that boundry.

Q. Did you go along the tract from the west line where David M. Pennington's land joins this tract to the east line where Kelly & Irvine land joins this tract.

A. Not on that day I did not, but a few days previous to that day I did, I was all along there on that place, I was where Mr. Roberts lived, and we stood at different points and looked over where we could see the whole land.

A. Did you actually pass along there over that land, or did you simply view it from a distance at the public road.

A. We viewed it from different points, as I told you, that is the cleared land we stopped on top of the road and viewed the timbered land and then we went down there all around up and down the road and viewed it, and went up and viewed it on the mountain side and we saw what was said to be the north line of the boundry, came back down and rode to different places and stopped and look where we could see and view the whole situation and looked at a boundry of timbered land.

Q. Now I will ask you to pay attention to my question, I asked you a moment ago if you ~~walked~~ over ~~the~~ this particular land in dispute, the railroad right ofway, ~~from~~ the west end of it to the east end of it

A: No, sir, we did not walk over it or ride over it either on that day. I told Mr. Flanary that morning that I did not feel inclined to walk over the whole land as I had been over it before, just a few days ago, and looked at it from difference points and I knew enough~~x~~ about it to make a statement about ~~as~~, as I had been on the land off and on for about twenty-five y ears.

Q Do you mean to say that you have been on this particular strip in dispute off and on for twenty-five years? or simply on the tract of land.

A. I have been up and down that valley along the road and on the land off and on for twentyfive years. I was along there while they were building the railroad.

Q. Do you think you are competent to measure this man's damages on a strip of land 40 feet wide on each side of the railroad track viewing the land at a distance, and not going over each particular part of it?

A / I consider that I am competent to give a fairly good estimate of the damage from the view I had of it, and my previous knowledge ot it.

Q. Did you^{go} over the south boundry of this tract of land?

A. Not that day I did not, though I know the south boundry as well as the northern boundry of this tract of land.

Q. Do you not know that on both boundrys which lie along the north side of the Poor Valley Ridge and on the south of the Stone mountain in land that consists entirely of nothing but rocks?

A. It is not first class land ~~xxxxxx~~ desirable for the purpose of farming, but for mineral timber water &c it is good valuable and useful ^a land.

Q. I would like for you to tell me what minerals are on the south side of the mountain.

A. Well I do not ~~know~~ of any on the south side of the mountain, but there is mineral on the ridge side.

Q. I will ask you to state whether or not you have observed the market price of lands in Lee County say from the year 1885 up to the present time, and whether or not in your opinion land has increased or decreased in value?

A. Of course it has been increasing from that time to the present. Land is selling higher and brings more money all the time.

Q. I see in a deed made by Chas. and W. J. Pennington to the L. & N. R. R. Co., of the right of way through this particular tract of land in dispute they sold this strip of land to the company in February 1890 at the price of \$250.00. Now if that land was worth \$250.00 to the railroad company, 200 feet of it, and Chas. and W. J. Pennington the owners of the land then were damaged to that extent for the taking of the 200 feet strip and would not Mr. Fleenor be damaged just as much in proportion to the amount of land that he lost on account of the railroad company's right of way?

Excepted to as irrelevant and immaterial the purchase of the right of way being for a special purpose and not for ~~the~~ ordinary or farming purpose.

A. Considering that the railroad company wanted to have it for a particular purpose and Mr. Pennington was using it and getting scarcely nothing off of it. If Mr. Fleenor wanted it for a public building and something like that it would be more valuable perhaps.

Q. Had the railroad company only owned a strip of 60 feet on either side of the center of the tract and Chas. Pennington had had the right ^{to convey} ~~to convey~~ this land up to sixty feet within the center of said track and the railroad company has instituted legal proceedings to condemn 40 feet more on either side of the said track off of the land owned by Mr. Fleenor, and you were one of the commissioners to assess the damage, could you go upon that land and conscientiously state

that the taking of the 40 feet by the railroad for railroad purposes would only be worth to him, and he would only be damaged to the extent of six or seven dollars per acre, the value you put ^{on} this land in your examination in chief.

Excepted to for the reasons above stated.

J.W.Orr.

A. I do not know that I could state what I would in those circumstances, to take the land entirely away from him.

Q. Did you examine the land at or near Mr. Fleenor's house and notice where the old fence of the railroad stood at 60 feet from the center of the tract and where the new fence now stands 100 feet from the center of the track.

A. Mr. Roberts told me about it and I could see the difference in the fencing.

Q. Did you notice that the new fence cut off a strip of 40 feet wide off Mr. Fleenor's garden?

A. I did not notice as to what was taken off the garden? I did notice the width of the strip and it look to be about thirty feet.

Q. Did you notice that it took in a road that formerly let him out to the county road. from his dwelling.

A. Yes sir I notice where the old fence was.

Q. Did you make up a value, and if you did not, can you now, as to what you think is a fair and just compensation for the loss of this road and the part of the garden, which the new fence cut off.

A. I did not make up an estimate and I don't believe I could now.

Q. Did you make an calculation as to what a new ~~xxxxx~~ road would cost Mr. Fleenor to get out to the public road?

A. I did not. Though it would not cost very much as it is just a little pass way out to the road, and all he would have to do would be to change the fence and a little work to do.

Q. Did you notice where a building had been removed from the 40 foot strip on the north side of the land near Mr. Fleenor .

A. I never noticed that, though I was informed that the building was on that strip and he had to move them back.

Q. You speak of swamps be^{ing} along the railroad right of way, I will ask you to state whether or not you noticed these swamps within the first 60 feet next to the railroad from the center of the tract, or did they run beyond this.

A. I could not state positively about that, I remember there is one in crossing near Mr. Ellenor's barn over to Mr. Roberts, this is a little swamp and is bridge over, and there are more swamps all along the railroad.

Q. Did you see any other improvements on the 40 foot strip out side where the sh^op and carpenter's shop had been moved?

A. No I don't think I did.

Q. I believe you state you did not undertake to go over the entire farm.

A. Not on that day I did not.

A. You viewed it from the County road except ~~xxxx~~ you went up a haul road to where some men were cutting timber?

A. We did not view it from the County road all together, and we did come up a haul road where some men were cut^{ti}ng timber.

Q. That was on the mountain side was it not?

A. Yes sir.

Q. Did you see any marketable timber there on that land?

A. I think all the best timber has been cut off by some one, but there was a good deal of small growth, and extra good wood on the mountain side, and a good deal of timber on the Poor Valley ridge

Q. You only examined it from a distance, you did not go through the timber.

A. We were through the mountain timber, and I have been through a portion of the Poor Valley side where Mr. Roberts was cutting.

Q. Now having been acquainted with this farm as you state for a number of years, now suppose you had purchased this farm at the price of \$2000.00 as your permanent home, gone into possession of it, under the same circumstances which Mr. Ellenor^has and at the same

place and take possession of the land within sixty feet of the center of the railroad track, what would you have considered your reasonable damage to the land to have 40 feet more on either side taken away from you.

Excepted to as irrelevant and immaterial, the question being what the strip of land in controversy is worth per acre, compared with the price of the entire boundary.

A. It would all together depend upon circumstances, I would consider it a damage to me, but I would not know what to estimate it at now.

Re examined by James W. Orr for ~~defendant~~. *Plff.*

Q. There has been something said about a road from Mr. Fleenor's house out to the public road, is that a public road or just a pass was from his house to the public road?

A. It does not seem to be a public road, it seem to be simply a pass way from the house out to the public road.

Q. State whether or not if the railroad company extended their fencing to the limit of their right of way and included this pass way in their right of way Mr. Fleenor can or can not conveniently

ly have another pass way by building one fence and thus making a lane between his fence and the fence of the right of way?

A. Of course he could, the land is smooth and it would not take much work to make a pass way.

Q. If Mr. Fleenor was permitted by the railroad company to move his fence in on his own side, and if he was like wise permitted to move the shops that has been spoken of on to his own land, and the making of a new pass way out to the public road all taken into consideration, will you please state again what you consider the strip worth per acer that is in controversy, including this moving and making a new pass way, with the boundary of land at the price paid for it.

9/ As to the building I do not know as to that, what it would cost to move it, then as to the land right a long in there I could not value it very high. I put the land on either side of the

strip in controversy as a little better land than the strip, I would put it a dollar or two higher than the strip.

A. You have been asked something about mineral on this boundary of land, and you said that you did not know of any on the mountain side, I will ask you now if it is not a fact that there is iron ore on the north side of Poor Valley ridge on adjoining lands and probably through this tract.

A. I did not see any mining on this land of Mr. Fleenors but I suppose there is mineral on all the Poor Valley ridge land, as there is mining going on on adjoining land just east of this.

Re Cross examination.

Q. In making up your damage by reason of the loss of this 40 foot strip of land on either side of the railroad track have you taken into consideration the moving of the fence on either side of the strip of land?

A. As I saw it the railroad company had simply set their fence back.

Q. You concluded that the railroad company went to this expense did you not?

A. I suppose they did .

Q. You ~~would~~ do not know how much it would have cost to moved the shop?

A. I do not remember anything particular about the shop what kind of a building it was.

And further this deponent saith not.

Signature waived.

Adjourned to met again tomorrow at the same time and place.

Met pursuant to adjournment January 27th, 1906.

W. P. Sprinkle another witness of lawful age being duly sworn deposes and says:

Q. State your age, residence and occupation?

I am 56 years old live near Jonesville, Va., and am a farmer.

Q. Where were you born and raised, and where have you resided during your life time.

A. I was born north east of Jonesville, about four miles, and I have lived about and near Jonesville ever since.

Q. Are you acquainted with the land sold by the ~~defendant~~ plaintiff to the defendant, and if so, for how long have you known it.

A. I am acquainted with it and have known it for a number of years, I have been on it off and on all my life but not so frequently for the last two or three years.

Q. What offices have you held in this County, and in this ~~magisterial~~ district.

A. I have been deputy sheriff for two or three years and served a term of of two years as constable in this district.

Q. Have you recently been on the boundry of land above referred to, and if so, for what purpose.

A. I was on it a few days ago, and was there for the purpose of estimating the value of the strip of land in controversy with ~~the~~ purchase price of the boundry, and I went at the request of the plaintiff's counsel.

Q. From your previous knowledge of the land and from your observation of the land on your recent visit, what do you consider the buildings and improvements of that kind on the land where the plaintiff resides worth compared with the boundry including building at the price of \$2000.00

A. The defendant does not reside on the land now as I was informed by Mr. Courtney, but lives with his father at Occonita. I consider the improvements spoken of to be worth from five hundred to five hundred and fifty dollars.

Q. If the buildings and improvements are worth \$500.00 what do you think the strip of land, or right of way in controversy is worth per acre compared with the price paid per acre for the entire boundry?

A. I consider the land away from the right of way of equal value with the strip in controversy per acre, and taking the timber and all into consideration I consider the other land worth a little more per acre than the strip in controversy.

Q. Please give the nature of the strip of land in controversy as to its fertility &c for farming purposes.

It is kind of broken piece of land, and there are some knobs along on it, and swamps cut out by the washes. Its nature is a poor quality of land, consisting of white and red sandy land. While the upper land, or lands further back on either side of the right of way is more productive.

Cross examination.

Q. Did you go with Flanary & Flanary the day they went over to look at this land.

A. No sir, I was not with them.

Q. When were you there?

A. I was there on the 19th I guess.

Q. Did you go over and along the railroad right of way on that day?

A. Yes sir, I was on the railroad right of way that day.

Q. Did you go over the entire strip?

A. I went over what I understood to be the entire strip of land, the entire right of way strip?

Q. Did you undertake to estimate Mr. Fleenor's damage by reason of the taking of the extra 40 feet on both sides of the railroad track through the entire place?

A. I do not believe I understood it to be 40 feet through the entire place, I understood it to be 30 through one and forty through the other. and I undertook to estimate its value as compared with the entire boundary.

Q. Now if Mr. Fleenor had owned the land on both sides of the track up to within 60 feet of the center of the track and you had been sent as a commissioner to assess his damage for the taking of 40 feet more on either side of the railroad for railroad purposes counting the value of the entire farm at \$2000.00 what would you have said would have been his damage for the taking of that strip including the cost of moving a carpenter's shop and Blacksmith's shop which stood near his dwelling, the loss of his road which lead him out to the public highway, and the cost and trouble of building another road and fencing it. R.R.

Objected to be cease irrelevant and immaterial the question being the value of the strip of land in controversy compared with the entire boundry at the price paid for the boundry, and for the purpose for which it was purchased.

J. W. Orr

I do not think of it and look at it in that way, I never examined it with that view.

Q. If I understand you, you simply examined the land with a view of comparing the value of this particular strip with the whole farm?

A. I did.

Re Direct examination.

Q. If Mr. Fleenor was permitted by the railroad company to move the shop and to move his fence and in addition to that

taking that all into consideration what would you still consider the value of the strip of land for farming purposes compared with the other land in the boundry for the same purpose?

A. I do not think it would change my opinion heretofore given.

And further this deponent saith not.

Signature waived.

Adjourned to meet again at the same place Jan 30th 1906.

*The depositions of E. E. Flanary and
of H. P. Sprinkle
Elcanar Flanary were taken and sworn to
before me, for the purposes in the
caption mentioned.*

This the 27th of Jan. 1906.

L. L. Brown J. C.

Chas. Punnett

W. } Depositions.

W. E. Flannery.

Filed February 14, 1906.
H. E. Ewing
Clerk.

A. E. Flannery.	500
Almonah Flannery.	300
W. P. Sprinkle.	300

Notary's Fee. \$9.75.

H/ C. Jospyn another witness of lawful age being duly sworn deposes and says.

Q. Do you remember preparing a deed by which Chas. Pennington sold his land near Ocoonits, Virginia to W. E. Fleenor,

A. Yes sir, I remember writing the deed.

The introduction of this witness at this time and for this purpose is excepted to because it is evidence in chief and the defendant having closed his evidence in chief the introduction of the witness is out of order.

Q. Mr. Pennington states in his deposition in this case that you and Mr. Fleenor and himself were in the room for the purpose of writing the deed and that you had written the deed as far down as the description and instead of writing the number of acres to be conveyed by the deed that you said in as much as we are not certain as to the number of acres that are taken out of the land for the railroad right of way we had better write it, "this land is sold by the boundary and not by the acre" in order to save time and trouble in the future I will ask you to state whether or not there was anything at all at any time during the negotiation of the trade said about the railroad right of way in your presence, at the time of the writing of the deed or at any other time?

A. My recollection is, that Mr. Fleenor and I went down together to Mr. ~~xxxxxx~~ Pennington's and that Mr. Pennington's wife was a little obstinate as to selling the land, and after a while she agreed to make the deed, and we had two or three talks in connection with the deed, and Mr. Pennington was very uncertain about the number of acres that he owned, and he seemed ~~to~~ not to know the boundary lines, and I suggested that the best way to do as Mr. Fleenor knew the corners that they sell the land by the boundary and not by the acre, but as to the railroad right of way being mentioned at all I do not remember it. I do not think there was any one else in the room much of the time except Chas. Pennington his wife and myself and Mr. Fleenor, and we three were there most of the time together.

Q. If there had been a question raised at that time with reference to the width of the right of way, and the reason for stated in the deed that the land was to be sold by the boundary and not by the acre was to illiminate any trouble trouble as to the said right of way do you not think you would have remembered that as the reason?

A. I certainly would have remembered it, as I was the one who suggested writing the deed by the boundry and not by the acres, and this was done because he was not certain as to the number of acres that was contained in the boundry?

The foregoing question and answer are excepted to for the reasons above stated and for the further reasons that the deed between the parties shows the contract and can not be varied or controdicted by any oral statement or understanding than ~~it~~ expressed in the deed/ and the deed shows a contract of hazzard?

James W. Orr.

Cross examination by Orr.

Q. How did you happen to go to write the deed, or did any one come after you?

A. I believe I received a letter from Mr. W. E. Fleenor asking me to come over and write a deed. He did not come after me, neither one of the parties came after me but I got news to come and I think it was by letter that they ordered me to come and write the deed. I am not certain which one of them wrote to me.

Q. Do you remember about what time of the day you got there?

A. I think it was about 10 o'clock, I remember we stayed there for dinner.

Q. Where was Mr. Pennington and Mr. Fleenor when you arrived?

A. I believe I struck Mr. Fleenor there about Ocoonita, and we went down to gether, that is my recollection about it.

Q. Do you know anything about what passed between the parties in reference to their trade before you got there for the purpose of writing the deed?

A. I only know what Mr. Fleenor told me as we went on up there? I did not hear anything that passed between them, the only difficulty that seem to be was Mr. Pennington's wife, as she objected to writing the deed for a while, and before I went to writing the deed they called her in and asked her what she was going to do?

Q. If I understand you correctly the trade seemed to have been made and agreed upon between the parties and that Mr. Pennington's wife hesitated about joining in the deed?

A. That was my understanding about it.

Q. Then you wrote the deed as they requested or directed that it should be written did you?

A. I did as they agreed upon how the deed should be written.

And further this deponent saith not.

Signature waived.

One day 50 cts.

W. E. Fleenor being reintroduced in his own behalf and being duly sworn deposes and says:

Q. Chas. Pennington in his deposition in answer to a question propounded to him by his counsel in this case said that he stated to you in reference to the right of way that he was not positive as to the number of feet that the railroad company owned on either side of the track, but he thought that it was only 60 feet. I will ask you to state whether or not Mr. Pennington in any way qualified his representation as to the number of ~~xxxx~~ feet contained in the right of way, or did he say positive the number of feet contained.

This question and any answer thereto is excepted to because evidence in chief and all others that or evidence in chief are excepted to because the defendant has already stated in his deposition heretofore taken on previous examination as to what occurred between him and the plaintiff with reference to this matter.

J.W. Orr

A. His statements about the right-of-way were always positive, there was nothing indefinite at all about it, as I stated before he

stated positively as to the number of feet in the presence of the section crew, and was as positive as could be, and he also stated it positively to me before we arrived there where they were working.

Q. As a special inducement to you to take him up on his offer of the land at \$2000.00, did he not show you a particular piece of land with-
in the 60 foot strip disputed, where he said to do that there would ^{you} have a chance of selling to the railroad company a certain portion of land at a good price to be used as construction material or something of that kind?

Excepted to because in conflict with the deed and because the evidence in chief, and because no foundation has been laid for this question in cross examination of the plaintiff in his deposition, and because time and place is not fixed. J. W. Orr

A. I can not say that he did that as a special inducement for me to purchase the land but he did do it just as we left the section men where they were filling, and there was quite a cave inside of a curv near the track, this was where we stopped, and he gave the section foreman some direction as to where the right of way extended, and when we passed there he stopped and pointed to that place and said there is a chance to sell a strip of land at your own price or at a big price, as they talk about moving the track over on the north side in order to get rid of the washes.

Q. I will ask you to state whether or not you have read Mr. Pennington's answer to question #3 in reference to how it happened that that it was stated in the deed that the sale was by the boundry and not by the acre?

A. Yes sir, I have.

Q. I will ask you to state if there was anything said at the time he speaks of in his answer in Capt. Joslyn's presence as to the rial-road right of way or about the width of it?

Excepted to as being inadmissible being in conflict with the deed. James W. Orr

A. The railroad right of way was not mentioned that day at all in Capt. Joslyn's presence.

Q. Now give your explanation as to why it was stated in the deed that the land is sold by the boundry and not by the acre.

Excepted to because evidence in cheif and intended to vary or explain or controdickt the deed, and the dee speaks for itself, and the language of the deed covers all grounds. and all reasons why is was so inserted.

J. W. Orr.

A. My recollection about it is about this? Capt. Joslyn wrote the deed and then stopped and asked us if we had surveyed the land or had it surveyed, and if we had agreed about writing it by the boundry or by the acre, and one of us spoke up and said that we had not surveyed it, and stated that we had agreed to convey it by the boundry, and he then stated he would write it that way when he came to the proper place for it in the deed.

Q. Then there was nothing said at all that ~~day~~ this expression by the boundry was put in in order to explain the uncertainty as to the width of the right of way?

Same exception as above. J. W. Orr

A. No sir, the right of way was not intimated or mentioned either by Mr. Pennington, my self or Capt. Joslyn.

Q. It has been stated by Elkana Flanary, C. E. Flanary and Wm. Sprinkle that the forty foot strip on either side of the rialroad right of way in controversy, would hardly be worth as much per acre on a average as the whole tract of land taken together, and that the timbered land is more valauble? I will ask you to state what is your opinion as to the ~~com~~parative value? of this land and that on the mountain and ridge side that is not timbered.

Excepted to because evidence in cheif and the witness in his deposition heretoforehas testified on this identical point. J. W. Orr

A. If you compare it that way it would be worth two or three times as much at least three times as much as the timbered land on the mountain side and ridge side it would not be worth so much compared with that, but still it would be worth considerably more. If you compare it with the average timber taking to the top of the ridge to the 12 1/2 acre strip it would be worth at least twice as much per acre.

Q. Have you put any of this land upon the market and if so, what prices have you been getting for ~~thix~~ the different kinds of land situated there.

Excepted to because irrelevant and immaterial.

J. W. Orr

A. Yes, I have sold different ~~tr~~parts of that land, and I have sold off some of that mountain timbered land as low as \$3.00 per acre, from three to five dollars per acre, and the highest I have got for any of it is \$10.00, the lowest price I have had for any of the land including down next to the railroad, the cleared land is \$15.00 per acre., and the highest is about \$22.00, but I could not say positive as we could not get at the number of acre accurate enough to know exactly what it would be.

A. Is it possible to sell that mountain side or ridge side for as much money as the land right a long the rialroad that is cleared and more level

Excepted to for the same reasons.

J. W. Orr

A. It has not be possible for me to do so, I have just tried to sell my onhalf interest in that 12 1/2 acre strip for \$50.00 but have not succeeded.

Q. I will ask you to state if you have made a diagram of the ~~grounds~~ land purchase by you from Mr. Pennington, showing the location of the shops, road and the railroad right of way your residence and out buildings &c.

A. I have.

Q. Did you make this as correct~~ly~~ as you could without the use of surveyors instruments to obtain the exact measurements, and if so, please file the same with your deposition marked "Diagram".

The filing of said pretended diagram is excepted to because irrelevant immaterial and inadmissble, evidence in cheif and because to indefinite, uncertain and poorly gotten up to be of any aid to the court or any body else in determining the question at issue. The location of the shop on the diagram is in the teeth of the evidence already introduced in the cause.

J. W. Orr

A. Yes sir, and I file the same as requested marked as requested.

Q. I see that you have marked on the plat 130 feet from the railroad right of way fence to your house, 130 feet from said fence to the barn 60 yds/ from the barn to the ~~shop~~ public road, and 90 yds from the barn to the house, I will ask you to state how you obtained these measurements.

Excepted to for the same reasons stated above.

J. W. Orr.

A. I obtained the distance from the house and barn to the public road by counting the railroad rails in front running parallel with the fence and I obtained the other distances by counting the fence panels that run in the opposite direction.

Q. Do you know the length of the rails from the railroad and the length of the panels?

Excepted to for the same reasons?

J. W. Orr/

A. Yes sir.

Q. What are they?

A. The railroad rails are 33 feet, and the fence panels, the plank ones, are 14 feet, while the rail fence I figured to be a rod to a double panel.

Q. How close to the new fence that the railroad company build was the ~~public~~ shop which you had to move?

Excepted to for the same reasons.

A. The northeast corner was ver neat the line, so near that they

had to tear off that corner in order to construct their fence one foot on their own side.

Q. Where did you move the shop to?

Excepted to for the same reasons? Orr

A. About three or four hundred yards south of where it sat, across the railroad.

Q. What did it cost you to remove the shop and carpenter's house to the place where you moved it?

Excepted to for the same reasons. Orr

A. I could not say positively as to that, as near as I can get at it now it cost me about \$15.00, that does not include any damage of course in taking off the roof.

Q. How much did it damage the building to move it.

Excepted to for the same reasons. Orr

A. Not less than \$10.00

Q. It has been stated by some of the witnesses of the plaintiff's that the only thing to do to make you another road out to the public road would be to build a fence, and that the land between your house and the public road running along parallel with the railroad company's fence is practically level and no grading or work would be required, I will ask you to state if you have examined the ground and if so how is it?

Excepted to for the same reasons stated above. Orr

A. If you make a road along by the railroad company's fence it is steep and would have to be graded, but putting it higher up it is rather level.

Q. How much would it cost you to build a fence and prepare as good road as you had before?

Excepted to for the same reasons. Orr.

A. I have not calculated that at all, but I am confident it would not stop short of \$25.00, it would depend of course, on the kind of fence you would make as to what it would cost.

Cross Examination by J. W. Orr/

Not waiving the objection to the introduction of this witness now to evidence heretofore given the counsel for the plaintiff here and now proceed to cross examine the witness.

Q. Was not the road or pass way spoken of by you simply a private pass way from the house out to the public road?

A. Yes sir, it was just simply a pass way from the house to the shop and barn out to the public road.

Q. Then it was not a public road?

A. No sir, it was never established by law, but it was used by the public in going out to the shop &c.

Q. To open up a new pass way and include it, you would only have to build one line of fence would you?

A. Yes sir, it would just take one line of fence to make a lane.

Q. Could you not place a gate at the public road, and avoid erecting even one line of fence?

A. You could do that but it would be very inconvenient about taking stock or anything through there, and the garden would be open that way, and would be more expensive in the long run than to build a fence.

Q. You say you think it costed you \$15.00 to move the shop to where you placed it, what would it have cost you to simple have moved it off the right of way on to your own land?

A. I think that would have cost about \$5.00 to moved it all together without tearing it down.

Q. You gave some measurements or distances in your diagram that you have filed in which you state that you counted a double panel of rail fencing as being one rod in length, what was the length of the rails constituting this rail fence?

A. 11 feet.

Q. Is it not a fact that a rail fence built out of rail 11 feet long with proper worm and proper lap is only about 15 feet from lock to lock in a double panel?

I never did measure to ascertain, I was just calculating that from an old saying or custom of counting that way.

Q. You have stated that you have sold some parcels off the boundary of land purchased by you from the plaintiff, I will ask you to state what parcels you have sold, that is, the amount contained in each and the price per acre for each parcel realized and where the same was situated.

A. That I sold at \$3.00 is on the north part on the mountain, it is the northern boundary and extend from the eastern end out about $\frac{2}{3}$ of the distance of the farm, on the northern boundary it was only timbered land, it would have about averaged with the mountain land as to smoothness and as to the timber on it. we measured the piece and counted about three acres. I sold two acres at \$5.00 per acre and it is situated out near the northeast corner, and adjoins the field shown in the map north of the County road. It was partly timber but most of the timber had been cut off and it is rough land. Then I sold $5 \frac{3}{4}$ acre immediately adjoining this two acres, but extending all the way to the north boundary on the mountain and south down to the county road at \$10.00 per acre, and it was all timbered land, and I believe a little bit rougher than the average of that mountain. This was as rough as the two and three acre pieces but a little more timber.

then I sold all that of these parcels, which included about two acres above the county road there in this sale and extends across the valley and up the north side of Poor Valley ridge to the southern boundary of land which includes the 25 acre near the top of the ridge. this was sold at \$15.00 per acre and I believe it figures out about 30 acres, then there is a strip I have not sold which extends up to the three acres above mentioned on the mountain and clear across the valley and up the Poor Valley ridge to the 25 acre strip, and then I not only own this strip but I own the $\frac{1}{2}$ interest in the 25 acre piece. Then west of this strip which I still own, I sold

another strip running about parallel with these strips just mentioned and contains about 40 or 45 acres at \$15.00 per acre, then going west and adjoining this land mention strip I sold the entire remainder of the boundry in two parcels on the south west corner I sold about ten acres less the timber right at \$10.00 per acre, then the remainder of all that western part I sold that as near as I could count at per acre at \$22.00, containing about 50 acres.

Q. Have you or not cut and used and removed and disposed of a considerable amount of timber from off this boundry of land since you purchased it from the plaintiff, and if so, state about how much and about what sum or sums you have realized from the same?

A. I have taken off considerable timber off the land, but I do not know how to estimate it or how to get at the different kinds.

I can not state the quantity of each kind of timber but I think I can state with reasonably accuracy the total number of feet of timber used off the land which is something near 100,000 feet.

worth about \$2.00 over and above expense. I have cut and disposed of something like 50 cords of extract wood, worth 75 cts per cord net, then I have the timber reserved on the piece sold on the Poor Valley ridge side above mentioned.

Q. Was there any fence on this boundry of land that had been put there by the railroad company at the time you purchased the land, and if so, where was it situated.

A. There was some fence on the south side of the track and beginning on the east end and extending up I guess 200 yards.

A. Was that all that was there and put there by the railroad co. at that time?

A. Yes sir.

Q. Has this line of fence since been removed by the railroad company?

A. No sir, it is just as it was built.

Q. How far is it from the center of the railroad track?

A. It looks to be about 60 feet just to pass along there, but I think it has been said to be about 80 feet or that it was started 80 feet from the east end.

Q. Did you not notify or request the railroad company to fence their right of way through this boundary of land after you had purchased the same?

A. I did.

Q. Were there any drain ditches cut by the railroad company on the slopes through this boundary of land and if so where?

A. Yes sir. What they call surface ditches all along over more than one half of the right of way the e. there is two of them that is out something like 80 feet one of them may possibly be 90 feet through the 185 acre tract then it lowers down to 60 feet along by the house it measures just 60 feet to the outside edge of the ditch.

Q. I will ask you to give as near as you can what per cent of 100,000 feet of lumber manufactured from timber cut from this land was poplar?

A. About 12 1/2 or 15 per cent of it was poplar I guess.

Q. What per cent of it white oak?

A. About 10% I guess.

Q. What kind of timber constituted the residue.

A. What is called red oak with a little black gum and chestnut, the chestnut and black gum would not have exceeded 5 %.

Re-direct examination by Pennington.

Q. You stated above that you noticed some ditches on the railroad right of way and within the 60 feet, I will ask you to state if Mr. Chas. Pennington was along at the time, and if so, what was said about it by you and him?

Excepted to because in conflict with the deed and the contract of hazzard. Orr.

A. We passed over one of these ditches the day I purchased the land, and in conversation concerning the width of the right of way

with Chas. Pennington I asked him why is was that they cut those ditches so far back, and he said that they cut them before he made the contract with the company for the right of way, they sent some Italians there to cut the ditches and they cut the ditches, before he could get Duncan there and made the agreement for the right of way, and then the rest of them were cut at their proper places. And further this deponant saith not.

Signature waived.

Met pursuant to adjournment January 30th, 1906.

J. W. Pennington another witness of lawful age being duly sworn deposes and says:

Q. State your age, residence and occupation and your relationship to Chas. Pennington the defendant in this case?

A. 48 year old, live at Occonita, Va. and am a farmer and saw milling. and am a brother of the plaintiff in this case.

Q. Please state what you know with reference to your brother, Chas. Pennington's claim as to the amount of the land which the L. & N. Railroad company owned as a right of way through the land which he sold to W. E. Fleenor.

A. Brother Charlie always claimed that they had 60 feet on either side of the center of the track, but I thought they had 80 feet through the large tract and 70 through the other on the north side.

Q. Were you at any time present during the negotiations of the trade between your brother and Mr. Fleenor.

A. Yes sir, I was present some of the time but I did not pay any attention to what was said.

Q. After the trade was made and it was ascertained for sure that the railroad company did own 100 feet on either side of the track state whether or not you ^{heard} ~~had~~ any conversation between Mr. Fleenor and Mr. Pennington with reference to the right of way.

A. No sir, I did not.

Cross examination by Judge Orr.

Q. I Believe ~~you owned~~ an interest in some of this land at one time?

A. I owned a one-half interest at the time the railroad was built through it.

Q. When the railroad company fenced any of their right of way on the ridge side what distance did they fence from the center of the land.

A. They fenced a little patch down on the lower end on the east end at first, and they fenced I think about 80 feet from the center of the track.

Q. Was that fence standing there at the time the trade was made between Mr. Pennington and Mr. Fleenor?

A. It was, a good many years before.

Q. Did the railroad company cut any ditches on the south side of the right of way, and if so, where did they cut the same?

A. Yes sir, they cut a ditch along pretty close, about 80 or 90 feet from the center of the track on the east end of the tract, what is called the divide, right on the summit.

Q. Was that ditch there when the defendant bought the land from the plaintiff, and did he have knowledge of it?

A. Yes sir, I think he did, he ought to have known it when he was on the land every day all most.

Re-direct examination.

Q. What do you consider a fair value of a strip of 40 feet on either side of that railroad track through the 185 acre tract, and 30 feet through the small tract on either side taking off for railroad purposes and depriving the farm permanently of it for railroad purposes, what do you consider the damage to the farm valuing it ~~for~~ at \$2000.00.

Excepted to because irrelevant and immaterial and inadmissible for the purpose of contriving or varying the deed between the parties, the contract being one of hazzard.

James W. Orr

A. If it had been my farm, I would not have had them take the extra 40 and 30 feet for less than \$150.00, as it took some very valuable land in, taking off part of the garden there.

Re-cross examination.

Q. Where did Chas. Pennington's dwelling house stand with reference to the boundry, I mean east or west along the right of way?

A. It was near the west side of the boundry, and perhaps not more than 500 feet from the west line of the 185 acre tract, the Russell land.

Q. From the said dwelling house eastward what kind of land is the strip of land in controversy as to its fertility and adaptation to cultivation?

A. Some of it can be cultivated very well, and there is a little patch on the north side there a little swampy through the land, but there is dry land through there, and on the west there is dry land.

Q. Is it not broken and uneven a considerable portion of it through the 185 acre tract on both sides?

A/ Of course it is a little in patches, and in patches it is not. Over on the south side where it goes through a grass field and takes in some fine land.

Q. I will ask you if the land there immediately on the value is not white sand and a poor quality of land?

A/ Of course some of it is, may be right on top of the summit there it is a little that way.

Q. When you get back from the right of way on the ridge side is not the ridge land more productive than the land along the right of way, and more productive on the mountain side?

A. No sir, I do not know that it is on the ~~mountain~~ much on the ridge side, it might be a little more productive on the mountain side.

Q. You say you think the plaintiff is damaged \$150 by the loss of the strip of land in controversy it being taken for railroad purposes I will ask you what this strip of land is worth per acre compared with the entire boundary per acre at the price paid by the defendant to the plaintiff for farming purposes.

A. I believe that it is just about an average with the boundary at the price paid.

And further this deponent saith not.

Signature waived.

At the day 50cts.

David M. Pennington another witness of lawful age being duly sworn deposes and says:

A. State your age residents occupation and relationship to the plaintiff.

A. I am 38 live at Ocoonita, and farm and saw mill brother of the

~~plaintiff~~

plaintiff and a brother in law to the defendant.

Q. I will ask you to state how long you have been acquainted with the tract of land which your brother Chas. sold to Mr. Fleenor?

A. I have known it all my life.

Q. I will ask you to state what you would consider a fair value of a 40 foot strip of land running through the entire two tracts along the right of way for the L. & N. R. R. out side of a 40 and 50 strip on neither side of the track taking the whole value of the farm at \$2000.00?

A. I would consider it worth \$100.00 any way taking it out thatway.

Q. Do you know anything of the contract between Mr. Fleenor and your brother Chas. as to the number of feet which your brother represented to Mr. Fleenor that the railroad company owned on either side of the track at the time they were trying to trade or negotiating the trade?

Excepted to as irrelevant and immaterial and inadmissible the deed showing the contract between the parties.

A. I heard a conversation about the right of way, but do not know whether it was before or after the trade. Chas. said they only had sixty feet, and before that Jeff and Emory looked at the records and found that it was 100 feet. They were talking there about it, and Chas. said he did not think they would ever fence the other part, as they had but in their cattle guards at 60 feet. Brother Jeff and Mr. Fleenor took a tape line and measured to where the 100 feet would come to, and what they would take in and they took in the old shop.

Cross examination by Orr.

Q. You stated on your examination in chief that you think the taking of the strip in controversy damaged the tract of land \$100, I will ask you to now state what you think the strip in controversy is worth per acre compared with the balance of the boundry at the price paid for the boundry at \$2000.00 with the buildings and improvements taken off

at what they are reasonably worth?

A. I do not believe the land would be any more valuable there than the rest of the land, but taking it out in the shape it is, I would not want it off for a right smart more, and I think \$100 is as little as it ought to be placed at.

Q. How far is the dwelling house in which your brother Chas. lived from the right of way, that is the 100 feet recently fenced in.

A. I guess it is about 150 feet from the right of way up to the house.

Re-direct examination.

Q. I will ask you to state if you can about the time of the year it was when Mr. Fleenor and Chas. Pennington had the conversation at the shop and measured the right of way, and by way of refreshing your memory as to the time I will ask you to state if it was not soon after the election in November?

Excepted to for the reasons above stated.

Orr.

A. It was late in the fall, it must have been the latter part of October or the first of November.

Q. Do you remember anything ~~that~~ that day being said about writing to the railroad company as to whether they would fence all their right of way through that land?

A. I remember something was said about writing to the railroad company about fencing the right of way, but do not remember what.

Q. Do you remember anything that was said about Judge Duncan in the conversation?

Excepted to for the same reasons stated above.

J. W. Orr.

A. Chas said if they had any more than 60 feet that Judge Duncan made it himself.

And further this deponent saith not.

Signature waived.

One day 50 cts.

R. D. Noe another witness of lawful age being introduced for the plaintiff deposes and says.

Q. Please state your age residence and occupation?

A. I am 41 reside at Occoonits, Virginia, and am a farmer and merchant.

Q. Are you acquainted with the land sold by Thas. Pennington to W. E. Fleenor, if so how long have you known it?

A. I have known the farm for something like 25 or 30 years and was raised near it with 1 1/2 miles, and have resided in that community all my life, and I have cut some timber off of the land.

Q. What do you consider the strip of land in controversy, that is the 30 foot strip on either side of the right of way through the 32 acre tract and the 40 foot strip through the 185 acre tract worth per acre compared with the price paid for the boundry excluding the buildings and improvements of that kind.

A. I consider the improvements are worth from five to seven hundred dollars including the orchard, and taking this farm the amount paid by the boundry I would think the strip in controversy would hardly be worth as much per acre even as the next 40 feet from the 100 foot right of way would be worth, and I would not think the strip would be worth as much per acre as the rest of the boundry considering the timber on the rest of the land.

Q. Please state the nature of the strip of land with reference to the quality for farming purposes &c compared with the balance of the boundry.

A. On the north side of the railroad and on the west end of the ridge tract ~~through~~ of land it is alight for a distance, then sets in some little drains and on top of the summit I believe there has been waste dirt spread on it from the cuts which make it poor and lowers the grade of the soil, and then sets in some very low and marshy places, that I do not believe could be cultivated reasonably, then on the east end comes back some good land, as good as the average farm is my way of looking at it. On the south side the farming land is all right beginning at the east on the strip until you come about one third of the way then there is a ditch dug, and seems

they have fenced the land, the fence running in places right close to this ditch and rendered that strip in poor shape for farming purposes also on the west end there is another one of these marshy, standing water placed on a part of it. Of course I never measured these distances and I could not say that it is all this way.

Q. Upon the whole what do you consider the strip worth per acre compared with the entire boundary at six or seven dollars per acre?

A. I would think it was one or two dollars less valuable compared with the price paid for the boundary.

Q. Were these ditches that you speak of cut by the railroad company in constructing their railroad, and were they there at the time the defendant bought the land from the plaintiff?

A. I did not see them cut, but I know it was the custom with the contractor to cut such ditches, and they have been there a long time, and were there at the time the land was last sold.

Q. Had the railroad company fenced any portion of their right of way on the east end before the sale of the land by the plaintiff to the defendant?

A. The railroad company had put up a fence, but I do not know whether they considered it their right of way or not, but they put it in on the south side of the track on the east end. and it was there at the time of the purchase.

Q. Has this fence been moved since by the railroad company or any one else?

A. I do not know. I have passed there on the train since they fenced their entire right of way, but I do not believe that I have walked the track?

Q. About what distance did it seem to be from the center of the of the right of way or railroad track?

A. It was not quite as far as they have fenced recently near the dwelling house.

Cross Examination by Pennnington.

A Have you examined the damage done down at the dwelling house by

reason of setting the fence up nearer to Mr. Fleenor's house?

A. No sir, I have never examined it any way in particular, and never looked at it thinking I would be called upon in this suit?

A. You do not know how much of his garden and conveniences about the premises and at the house has been damaged by cutting off the extra 40 feet.

Excepted to for reasons stated above.

J. W. Orr/

A. I have not examined it with that view.

Q. Were you acquainted with the shop?

A. Yes sir I have seen it and been in it.

Q. What do you think it would be worth to move the shop and place it on his own land?

Excepted to for the same reasons.

J.W.Orr

A. I hardly know what the real value would be, it would depend on where he wanted to move it to. I could not say exactly, but would think it could be moved for \$5.00 to take it across the road where Mr. Roberts lived.

Q. Do you know how much damage was done to the garden?

A. No sir.

Q. Do you know how much it would cost to rebuild a road out from his house to the public road?

A. No sir.

Q. Assuming that the property was your own, and you owned within 60 feet on either side of the railroad track through this large tract and within 50 feet through the smaller tract, and you had paid and the land was worth \$2000.00 all together up to within 60 and 50 feet as aforesaid for what sum would you have been willing to have conveyed to the railroad company 40 feet more on either side of their right of way through the large tract and 30 through the

small tract taking it no consideration they cut off his out let to the public road, the damage to his garden, and being deprived of that particular strip of land for railroad purposes, what price would you think ~~they ought to have~~ you ought to have justly and fairly from the railroad company for that strip of land under those conditions?

Excepted to for the reasons before stated and because it is irrelevant and immaterial the question being what the strip of land is worth per acre, compared with the boundary at the price paid for the boundary. J. W. Orr.

A. If I knew I was going to sell the farm I would make a difference in value and consideration if they were to come and offer me an amount for it, but if I was going to reside there I would not have it cut off for less than \$100.00

Re-direct examination by Orr.

Q. You state that you think it would have been worth \$5.00 to have torn down the shop and moved it across the railroad on the Poor Valley ridge side where Mr. Roberts lives, and where Mr. Fleenor moved it to. What do you think it would have been worth to have torn down the shop ^{or} ~~and~~ to have moved it without taking it down simply off the right of way on to his own land?

A. If it was torn down I would consider it worth the same less the hauling, but if it was moved on rollers over to the other side, I would say \$2.00, and in both answers I have not considered the fire place, and I do not know either whether it was an old one and needed a new fire place or not.

And further this deponent saith not.

Signature waived.

One day 50 cts.

The depositions of C. E. Flanery

taken by consent of parties at the law office of James W. Orr, on the 24th day of January, 1906, which are intended to be read as evidence on behalf of the plaintiff in a certain suit in Chancery pending in the Circuit Court of Lee County, Virginia wherein Chas. Pennington is plaintiff and W. E. Fleenor defendant.

James W. Orr for Plaintiff.

Present:

R. L. Pennington for Deft.

C. E. Flanery being a witness of lawful and duly sworn deposes and says:

Q. Please state your age, residence and occupation?

A. I am 45 years old, live at Jonesville, Virginia and am a farmer.

Q. Are you acquainted with the land in Poor Valley near Occoonita sold by the plaintiff to the defendant, and if so, please state the extent of your acquaintance of the same.

A. I have been through the land at different times, for several years, and the other day I went over the land for the purpose of looking at it.

Q. Please state what you consider the value of the strip of right of way in controversy which is said to contain about seven acres, per acre compared with the price paid by the defendant to the plaintiff for the entire boundary, which boundary is said to contain 229 1/2 acres including the right of way, and the purchase price being \$2000.00?

A. I believe that it figures out about nine dollars per acre does it not? My way of valuing it, considering ~~xxxx~~ the two strips on each side of the right of way I do not consider it as valuable as the land a little farther back nor as valuable as the timbered land, taking into consideration the timber there and it being so near the depot as what it is. I consider the timber on either side of the 22 acre tract as being worth as much as the cleared land on the said

tract owing to the fact that the buildings and improvements where the plaintiff lived is on the cleared land. I consider the timbered land on the 185 acre tract worth as much or a little more per acer then the cleared land on said tract. Now ~~proportionately~~ I consider the strip in controversy worth \$8.00 per acer when compared with the boundry at about \$9.50 per acre. There are swampy places all along the track, and the water is caused to stand in places by the railroad putting in their fills and making their track. It is swampy along there compared with the other land, as the railroad is build in the lowest part of the valley. And there are some uneven places along that land. I did not go over the entire strip, but I was at each end of it, and had a genral view of it, and then I have passed through the boundry heretofore. I have been in the dwelling house where the plaintiff lived, and I have been near the barn, tho not in it, and from my observation of the buildings and the improvements on the land the orchard &c, these improvements ought to be rated at about the sum of five or six hundred dollars. in the price of the land.

Q.)_ If the purchase price of the land was \$2000.00 and the buildings on the land out side of the strip in dispute was worth \$500.00 what would that leave the price of land per acre for the boundry?

A. That would leave \$1500.00 for the land, and if there is $21\frac{1}{2}$ acres out side of the entire right of way, at the price of \$1500.00 for the land, would be a little over seven dollars per acre.

Q. If the price of the land then, out side of the buildings and improvements was \$7.10 per acre what is the value of the strip in controversy per acre compared with this price per acre for the entire boundry?

A/ I consider it worth \$7.10 through the 32 acre tract, and through the 185 acre tract I would put it from \$1.50 to \$2.00 per acre less than for the 32 acre tract, I would say from \$5.10 to \$5.61 per acre. as there is more timber on this tract than on the 32 acre tract.

A. State whether or not you observed that there had been timber cut and removed or used off this land recently?

~~Extra~~ Yes sir, there was a man cutting there that day, he was cutting

extract wood, I believe. I observed that there had been timber cut on the Pennington land.

Cross examination by Mr. Pennington.

Q/ I will ask you to state if you are not used to living upon land of quite a different character then that in controversy?

A. I am.

Q/ Has not all your experience as a farmer been with the blue grass and Powells valley alnd, and none with the Poor Valley country land?

A. Mt principle life has been farming in the Powells Valley, and I have not farmed any in the Poor Valley.

Q. And to one who has been used to Powells Valley land does it not appear to him that the Poor Valley alnd is rather poor and worthless for farming purposes?

A. It appears that way to me.

Q/ Not having had any experience with Poor Valley alnd, and lands of that character do you believe that you could make up and give a fairly accurate estimate as to its value?

A. Bassing all my judgment on the crops that I have seen grown on this character of land I believe I could give a ver fair evalue of its worth.

Q. I will ask you to state whether or not ^{have} you noticed the market prices of land in general throughout the county of Lee from the year 1885 up to the present time, and state whether or not the price has been advancing or decreasing.

A. I have been watching the land business a little from that time up to the present and my observation is that the land have increased in price from that time up to the present.

Q. As a general thing have not lands in Lee County, and especially along the railroad ~~has~~ advanced in price almost double to chat it was preveous to the building of the Louisville & Nashville R.R. through this county?

A. Taking the land throught this Poor Valley and especially the timbered land seems to be worth a good deal more since the railroad has been built. All farming land is worth more since the construction of the railroad.

Q. I notice upon the examination of the deed from Chas. Pennington and W. J. Pennington made of this particular right of way through the 185 acre tract that in February 1890, he sold this particular strip of farming land to the L. & N. R. R. Co., consisting of fourteen acres, at the price of \$250.00 Do you believe from your experience and observation that the value of this ~~kind of~~ land has increased or decreased in value from that time down to the present. or would you thin it had held its own in the market price.

Objected to as irrelevant and immaterial.

J. W. Orr/

A. Taking it as a whole I do not consider the land worth as much now as it was then, considering the timber that has been taken off of the tracts &c.

Q. As to this particular strip of land in contriversy, I will ask you to state whether or not in your onpinion that the land is worth as much from the present marketable standpoint as farming land now as it was in February 1890?

Objected to because irrelevant and immaterial and inadmissible, the question being what the strip of land is worth compared with the price paid for the entire boundry.

J. W. Orr.

A. From my observation of the land I do not believe that it would be worth hardly as much for farming purposes now, as it was before the railroad was build, because there are places they had to fill in, or build up and it has caused swamps to form, and caused water to stand on the land that otherwise would perhaps not have done so.

Q. Did you notice where the railroad right of way, cut off a portion of the buildings, raods, orchars, fencing U&c belonging to this farm which was within the disputed boundry.

A. I noticed a strip of land that had been cutoff lately by fencing that the railroad has lately built.

Q. Now the cutting off of this piece of land by the railroad fence did it not materially inconvenience and damage the rest of land and if so, what amount of damage was done to the place.

A. I stated above that this would damage the rest of the thrity two acre tract thinking that the buildings were on the 32 acre tract, but

I am now informed that the 32 acre tract is west of this building and extends as far east as the cattle guards west of the house and ~~buildings~~.

Q. To cut off this land which is in dispute at the house and cause the removal of the blacksmith's shop and carpenter's shop, and the taking away of the land at this point, would you not consider that it ~~was~~ damaged the house, garden and outlet to the county road, and if so, what would you regard that damage.

A. I consider that taking this strip long there by the house that it damaged the situation there where the buildings were to some extent, but I was not asked to assess that damage there as to the buildings and I did not put any estimate on it. It did in my opinion disfigure the location and the way of getting into the house and into the barn to some extent, and made it a little inconvenient to what it used to be since they have fenced that in.

Q. And does it not cause Mr. Fleenor to build a new road to give him an outlet to the County road?

A. Yes sir, he will have to make him a road ~~fromxxxxxx~~ so as to get it.

Q. If you had come ther to assess the damage to Mr. Fleenor at this building on a proceeding to condemn this particular land at that point for the railroad company what would you have said that the railroad company should justly pay Mr. Fleenor for the inconvenience he would have been put at by reason of taking that strip.

Objected to because irrelevant and immaterial.

J. W. Orr.

A. I would have to take a better view of the strip of land then what I have to answer that question, and put any estimate of damage on it. I considered he was damaged some but just what I would not be willing to say.

Q. What portion of the land did you look over that day when you valued it.

A. I would consider he was damaged some, but as I have said heretofore to what extent I could not say.

A. Any way, taking into consideration the entire matter, so far as you are informed and from your personal value of the premises and of the having been corrected in regard to this impression, ~~what~~ extent

of the two tracts of land, and as to the buildings being situated on the 185 acre tract instead of the 32 acre tract, I will ask you now to give your best estimate of the value per acre of the strip in controversy through the two tracts compared with the price per acre paid by Mr. Flee nor for the entire boundary.

A. I am just the same opinion I was. I considered that the strip is worth just about as much as any of the land if I lived there, but if I was away from there I would not consider it worth so much per acre. Taking it as a whole I would not consider it worth as much per acre as the entire boundary at \$7.10 per acre, I believe \$6.00 per acre upon the whole compared with \$7.10 for the boundary.

Q. You have been asked on cross examination something about the necessity of a new road. Please state whether or not Mr. Flee nor will have much to do for a new pass way in order to open it up.

A. He would have to make him a new road, but so far as making a road is concerned the land is comparatively level and there would be very little to do to open up a road.

Q. I will ask you if you were not born and raised in Lee County, and if you were not sheriff of this County for several years, and is it not a fact that you have been acquainted with the Poor Valley and Cumberland Mountain from your earliest childhood, and the nature of the land imbraced in the Poor Valley.

A. Yes sir. I was born and raised in Lee County, was sheriff four years, and have been acquainted with these land all my life.

Q. Please state what you consider the nature of the strip of land in controversy as to fertility, compared with the other lands of the tract both on the Poor Valley ridge side and the mountain side?

A We cross the ridge up at Champ Hamblins and stopped on the ridge side at the turn of the road above the bridge and valued that land on the Poor Valley Ridge side there, and then we rode on around and stopped there about the section houses and look at the land from that point, and then we viewed the land from the mountain side where Mr. Garret was getting out extract wood and we look at the timbered land, and came on down in the Poor Valley where Mr. Roberts was working getting out wood off a strip of land Mrs. Fleenor had sold to him, and we talked to him about the land.

Q Did you see enough of the mountain side to make up a fair opinion as to what its value would be?

A. I think we did.

Q. How long were you over there?

A. I guess we were there something like two hours/ We staid up on the mountain where Mr. Garrett was for about one hour.

Q. Suppose you had bought this land, you contracted that the right of way was 60 feet from ~~either~~ the center of the track, and it turned out to 100 feet what would you have considered your damage by reason of the taking of the other 40 feet on either side of the road bed taking into consideration the improvements, and other things, and the inconvenience of having the location down at the house disfigured and cut up as it is.

Objected to because irrelevant and immaterial, because the supposed case does not exist and the hypothesis is not well founded, the question and any answer thereto is therefore irrelevant and immaterial.

J. W. Orr/

A. Not knowing how much fencing they have moved by the reason of the right of way, and not inspecting the house very closely I could not put an estimate of damage on it.

Re-direct examination by J. W. Orr/

Q. If Mr. Fleenor was permitted to move in his fence and to move the shops &c/ do you consider that he was much damaged on that account?

IA. I consider the land along the right of way worth less and harder to keep us than the land on the mountain side or ridge side, ^{there} and is better class land on either side than that land, it would be more productive on the ridge or mountain side. I think the land on the mountain side more productive and lastly than the strip in controversy.

Re-Cross examination by Pennington.

Q. Do you know anything of the value of the Blacksmith's shop and carpenters shop that was removed off the tract, and the fencing?

A. I was at the shop at once time, but what kind of a shop it was I do not remember and can not state its value/ and as to the fencing I believe it was rail fencing, but I could not be positive.

Q. Do you know how far he would have to build a lane to get out to the public road.

A. I would guess about 100 yards.

Q. To build a lane it would take about two hundred yards of fencing?

A. He would not have to build but one fence as the railroad fence is on one side of him.

Q. It getting to his house would he not have to pass through his barn yard?

A. I do not believe he would necessarily would as his barn is far enough north to prevent that.

Q. Any way he would have to pass his barn or near to his barn?

A. He would pass between his barn and the right of way to get to his house.

Q. Will this bring him to the front or back of his house?

A. It could bring him to the front of his house.

Signature waived.

And further this deponent saith not.

Met pursuant to adjournment at the same place January 26th, 1906.
Elkanah Flanary another witness of lawful age being duly sworn deposes and says:

Q. Please state your age, residence and occupation?

A. 51 years of age, live at Jonesville, Virginia, and am a farmer.

Q. Are you acquainted with the land purchased by W. E. Fleenor from Chas. Pennington and on which the said Fleenor now resides?

A. I am and have been there on and off and known it about 25 years.

Q. Have you recently been on said land and if so, when, and who were with you?

A. I was on it a few days ago in company with Chas. E. Flanery.

Q. Have you been informed as to the location of the strip of land or right of way that is in controversy in this suit?

A. I have.

Q. From your knowledge of the boundary of land sold by the plaintiff to the defendant and the strip in controversy if said boundary contained 229 1/2 acres including the railroad right of way, and 212 1/2 acres excluding the railroad right of way and the boundary was sold at the price of \$2000.00 what do you consider the strip of land in controversy worth per acre compared with the entire boundary at the price paid.

A. I look over that farm the other day the best I could taking the all into consideration the timbered and cleared land, and I do not believe the land there in controversy, that is the land along the railroad track, or the land in dispute, worth as much as the land a little farther back from the tract going toward the ridge and mountain. I do not consider that strip as useful as the rest of the land on either side, taking the timber into consideration from each side from the railroad right of way.

Q. From your observation of the buildings and improvements do you consider them reasonably worth what

A. As to the house I never was in the house, never was in Mr. Fleenor's yard, but as to the barn I have been through it two or three times.

and it seems to me to be a rather new barn. From the outward appearance and what I have seen of the barn &c, I consider the improvements worth from five hundred to five hundred and fifty dollar that is my estimate from my knowledge which limited as to the house.

Q. If the boundry of land was worth \$2000.00 and the improvements are worth \$500.00 that would leave the land worth \$1500.00 would it not?

A. It would.

Q. Then if the land contains 212 1/2 acres in the boundry outside of the railroad right of way, and that is worth \$1500.00 that would be \$7.06 per acre for the land would it not.

Objected to because leading and suggestive.

R. L. Pennington.

A. I have not calculated it.

Q. If the land is worth \$7.06 per acre for the boundry exclusive of the buildings what do you consider the strip of land in controversy worth per acer compared with that price for the entire boundry?

A. I would make some difference because, as I have stated I consider the land on either side, running up the mountain and ridge more valuable, and I would make a dollars or two difference any way. as the land on either side is timbered and useful and better land. I do not regard the strip as valuable as the other land.

Q. Then as I understand you correctly you would consider the strip in controversy worth from five to six dollars per acre compared with the entire boundry. at \$7.06 per acre.

A. I would proportion it about that way.

Cross Examination by R. L. Pennington.

Q. How far do you live from the land in controversy?

A. It is something like four miles, I think.

Q. It is not nearer seven miles than four?

A. No sir, I think not. I never measured it but I consider it about four miles, and I would not put it as much as five.

Q. Have you ever had any experience with farming the Poor Valley lands?

A. I never farmed any in the Poor Valley.

Q. Where is your farm land situated?

A. My home place is about 6 1/2 miles west of Jonesville, in Powell's valley.

Q. When did you last visit the land with a view of look over this particular land in dispute?

A. I could not tell the day, but it was just a few days ago, I believe it was one day last week.

Q. How long did you spend on the land?

A. We were there something like two or three hours. I could not say exactly.

Q. Did you look over the thirty two acre tract?

A. I can't say in regard to the thirty two acre tract, we were showed the boundary of the whole 229 1/2 acres and we look over the thirty two acre tract if it was embraced in that boundary.

Q. Did you go along the tract from the west line where David M. Pennington's land joins this tract to the east line where Kelly & Irvine land joins this tract.

A. Not on that day I did not, but a few days previous to that day I did, I was all along there on that place, I was where Mr. Roberts lived, and we stood at different points and looked over where we could see the whole land.

A. Did you actually pass along there over that land, or did you simply view it from a distance at the public road.

A. We viewed it from different points, as I told you, that is the cleared land we stopped on top of the road and viewed the timbered land and then we went down there all around up and down the road and viewed it, and went up and viewed it on the mountain side and we saw what was said to be the north line of the boundary came back down and road to different places and stopped and look where we could see and view the whole situation and looked at a boundary of timbered land.

Q. Now I will ask you to pay attention to my question, I asked you a moment ago if you ~~walked~~ over the ~~this~~ particular land in dispute, the railroad right of way ~~from~~ the west end of it to the east end of it

A: No, sir, we did not walk over it or ride over it either on that day. I told Mr. Flanary that morning that I did not feel inclined to walk over the whole land as I had been over it before, just a few days ago, and looked at it from difference points and I knew enough about it to make a statement about it, as I had been on the land off and on for about twenty-five years.

Q. Do you mean to say that you have been on this particular strip in dispute off and on for twenty-five years? or simply on the tract of land.

A. I have been up and down that valley along the road and on the land off and on for twentyfive years. I was along there while they were building the railroad.

Q. Do you thin you are competent to measure this man's damages on a strip of land 40 feet wide on each side of the railroad track viewing the land at a distance, and not going over each particular part of it?

A / I consider that I am competent to give a fairly good estimate of the damage from the view I had of it, and my previous knowledge of it.

Q. Did you over the south boundry of this tract of land?

A. Not that day I did not, though I know the south boundry as well as the northern boundry of this tract of land.

Q. Do you not know that on both boundrys which lie along the north side of the Poor Valley Ridge and on the south of the Stone mountain in land that consists entirely of nothing byt rocks?

A. It is not first class land ~~xxxxxx~~ desirable for the purpose of farming, but for mineral timber water &c it is good valuable and useful alnd.

Q. I would like for you to tell me what minerals are on the south side of the mountain.

A. Well I do not know if any on the south side of the mountain, but there is mineral on the ridge side.

Q. I will ask you to state whether or not you have observed the market price of lands in Lee County say from the year 1885 up to the present time, and whether or not in your opinion land has increased or decreased in value?

A. Of course it has been increasing from that time to the present. Land is selling higher and bring more money all the time.

Q. I see an deed made by Chas. and W. J. Pennington to the L. & N. R. R. Co., of the right of way through this particular strip of land in dispute they sold this strip of land to the company in February 1890 at the price of \$250.00. Now if that land was worth \$250.00 to the railroad company 200 feet of it, and Chas. and W. J. Pennington the owners of the land then were damaged to that extent for the taking of the 200 feet strip and would not Mr. Fleenor be damaged just as much in proportion to the amount of land that he lost on account of the railroad company's right of way?

Excepted to as irrelevant and immaterial the purchase of the right of way being for a special purpose and not for ~~the~~ ordinary or farming purpose.

A. Considering that the railroad company wanted to have it for a particular purpose and Mr. Pennington was using it and getting scarcely nothing off of it. If Mr. Fleenor wanted it for a public building and something like that it would be more valuable perhaps.

Q. Had the railroad company only owned a strip of 60 feet on either side of the center of the tract and Chas. Pennington has had the right of way this land up to sixty feet within the center of said track and the railroad company has instituted legal proceedings to condemn 40 feet more on either side of the said track off of the land owned by Mr. Fleenor, and you were one of the commissioners to assess the damage, could you go upon that land and conscientiously state

that the taking of the 40 feet by the railroad for ~~railroad purposes~~
would only be worth to him and he would only be damaged to the extent
of six or seven dollars per acre, the value you put ^{on} this land
in your examination in chief.

Excepted to for the reasons above stated.

A. W. Orr.

A. I do not know that I could states what I would in those circumstances, to take the land entirely away from him.

Q. Did you examine the land at or near Mr. Fleenors house and notice where the old fence of the railroad stood at 60 feet from the center of the tract and where the new fence now stands 100 feet from the center of the track.

A. Mr. Roberts told me about it and I could see the difference in the fencing.

Q. Did you notice that the new fence cut off a strip of 40 feet wide off Mr. Ellenor's garden?

A. I did not notice as to what was taken off the garden? I did notice the width of the strip and it look to be about thirty feet.

Q. Did you notice that it took in a road that formerly let him out to the county road. from his dwelling.

A. Yes sir I notice where the old fence was.

Q. Did you make up a value, and if you did not, can you now as to what you think is a fair and just compensation for the loss of this road and the part of the garden, which the new fence cut off.

A. I did not make up an estimate and I dont believe I could now.

Q. Did you make an calculation as to what a new ~~XXXXX~~ road would cost Mr. Fleenor to get out to the public road?

A. I did not. Though it would not cost very much as it is just a little pass way out to the road, and all he would have to do would be to change the fence and a little work to do.

Q. Did you notice where a building had been removed from the 40 foot strip on the north side of the land near Mr. Fleenor .

A. I never noticed that though I was informed that the building was on that strip and he had to move them back.

Q. You speak of swamps be along the railroad right of way, I will ask you to state whether or not you noticed these swamps within the first 60 feet next to the railroad from the center of the tract, or did they run beyond this.

A. I could not state positively about that, I remember there is one in crossing near Mr. Ellenor's barn over to Mr. Roberts, this is a little swamp and is bridge over, and there are more swamps all along the railroad.

Q. Did you see any other improvements on the 40 foot strip out side where the shp and carpenter's shop had been moved?

A. No I don't think I did.

Q. I believe you state you did not undertake to go over the entire farm.

A. Not on that day I did not.

A. You viewed it from the County road except ~~xxxxx~~ you went up a haul rode to where some men were cutting timber?

A. We did not view it from the County rode all together, and we did come up a haul rode where some men were curring timber.

Q. That as on the mountain side was it not?

A. Yes sir.

Q. Did you see any marketable timber there on that land?

A. I think all the best timber has been cut off by some one, but t there was a good deal of small growth, and extra good wood on the mountain side, and a good deal of timber on the Poor Valley ridge

Q. You only examined it from a distance, you did not go through the timber.

A. We were through the mountain timber, and I have been through a portion of th Poor Valley side where Mr. Roberts was cutting.

Q. Now having been acquainted with this farm as you state for a number of years, now suppose you had purchased this farm at the price of \$2000.00 as your perminent home, gone into possession of it, under the same circumstances which Mr. Ellenor as and at the same

place and take possession of the land within sixty feet of the center of the railroad track, what would you have considered your reasonable damage to the land to have 40 feet more on either side taken away from you.

Excepted to as irrelevant and immaterial, the question being what the strip of land in controversy is worth per acre, compared with the price of the entire boundary.

A. It would all together depend upon circumstances, I would consider it a damage to me, but I would not know what to estimate it at now.

Re examined by James W. Orr for defendant.

Q. There has been something said about a road from Mr. Fleenor's house out to the public road, is that a public road or just a pass way from his house to the public road?

A. It does not seem to be a public road, it seem to be simply a pass way from the house out to the public road.

Q. State whether or not if the railroad company extended their fencing to the limit of their right of way and included this pass way in their right of way Mr. Fleenor can or can not conveniently

ly have another pass way by building one fence and thus making a lane between his fence and the fence of the right of way?

A. Of course he could, the land is smooth and it would not take much work to make a pass way.

Q. If Mr. Fleenor was permitted by the railroad company to move his fence in on his own side, and if he was likewise permitted to move the shops that has been spoken of on to his own land, and the making of a new pass way out to the public road all taken into consideration will you please state again what you consider the strip worth per acre that is in controversy, including this moving and making a new pass way with the boundary of land at the price paid for it.

As to the building I do not know as to that what it would cost to move it, then as to the land right a long in there I could not value it very high. I put the land on either side of the

strip in controversy as a little better land than the strip, I would put it a dollar or two higher than the strip.

A. You have been asked something about mineral on this boundary of land, and you said that you did not know of any on the mountain side, I will ask you now if it is not a fact that there is iron ore on the north side of Poor Valley ridge on adjoining lands and probably through this tract.

A. I did not see any mining on this land of Mr. Fleenors but I suppose there is mineral on all the Poor Valley ridge land, as there is mining going on on adjoining land just east of this.

Re Cross examination.

Q. In making up your damage by reason of the loss of this 40 foot strip of land on either side of the railroad track have you taken into consideration the moving of the fence on either side of the strip of land?

A. As I saw it the railroad company had simply set their fence back.

Q. You concluded that the railroad company went to this expense did you not?

A. I suppose they did.

Q. You ~~could~~ do not know how much it would have cost to moved the shop?

A. I do not remember anything particular about the shop what kind of a building it was.

And further this deponent saith not.

Signature waived.

Adjourned to met again tomorrow at the same time and place.

Met pursuant to adjournment December 27th, 1906.

W. P. Sprinkle another witness of lawful age being duly sworn deposes and says:

Q. State your age, residence and occupation?

I am 56 years old live near Jonesville, Va., and am a farmer.

Q. Where were you born and raised, and where have you resided during your life time.

A. I was born north east of Jonesville, about four miles, and I have lived about and near Jonesville ever since.

Q. Are you acquainted with the land sold by the ~~defendant~~ plaintiff to the defendant, and if so, for how long have you known it.

A. I am acquainted with it and have known it for a number of years, I have been on it off and on all my life but not so frequently for the last two or three years.

Q. What offices have you held in this County, and in this judicial district.

A. I have been deputy sheriff for two or three years and served a term of of two years as constable in this district.

Q. Have you recently been on the boundary of land above referred to, and if so for what purpose.

A. I was on it a few days ago, and was there for the purpose of estimating the value of the strip of land in controversy with purchase price of the boundary, and I went at the request of the plaintiff's counsel.

Q. From your previous knowledge of the land and from your observation of the land on your recent visit, what do you consider the buildings and improvements of that kind on the land where the plaintiff resides worth compared with the boundary including building at the price of \$2000.00

A. The defendant does not reside on the land now as I was informed by Mr. Courtney, but lives with his father at Occonota. I consider the improvements spoken of to be worth from five hundred to five hundred and fifty dollars.

Q. If the buildings and improvements are worth \$500.00 what do you think the strip of land, or right of way in controversy is worth per acre compared with the price paid per acre for the entire boundary?

A. I consider the land away from the right of way of equal value with the strip in controversy per acre, and taking the timber and all into consideration I consider the other land worth a little more per acre than the strip in controversy.

Q. Please give the nature of the strip of land in controversy as to its fertility &c for farming purposes.

It is kind of broken piece of land, and there are some knobs along on it, and swamps cut out by the washes. Its nature is a poor quality of land, consisting of white and red sandy land. While the upper land, or lands further back on either side of the right of way is more productive.

Cross examination.

Q. Did you go with Flanary & Flanary the day they went over to look at this land.

No sir I was not with them.

Q. When were you there?

A. I was there on the 19th I guess.

Q. Did you go over and along the railroad right of way on that day?

A. Yes sir, I was on the railroad right of way that day.

Q. Did you go over the entire strip?

A. I went over what I understood to be the entire strip of land, the entire right of way strip?

Q. Did you undertake to estimate Mr. Fleenor's damage by reason of the taking of the extra 40 feet on both sides of the railroad track through the entire place?

A. I do not believe I understood it to be 40 feet through the entire place, I understood it to be 30 through one and forty through the other. and I undertook to estimate its value as compared with the entire boundary.

Q. Now if Mr. Fleenor had owned the land on both sides of the track up to within 60 feet of the center of the track and you had been sent as a commissioner to assess his damage for the taking of 40 feet more on either side of the railroad for railroad purposes counting the value of the entire farm at \$2000.00 what would you have said would have been his damage for the taking of that strip including the cost of moving a carpenter's shop and Blacksmith's shop that stood near his dwelling, the loss of his road which lead him out to the public highway, and the cost and trouble of building another road and fencing it.

Objected to be cease irrelevant and immaterial the question being the value of the strip of land in controversy compared with the entire boundary at the price paid for the boundary, and for the purpose for which it was purchased.

J. W. Orr

I do not think it and look at it in that way, I never examined it with that view.

Q. If I understand you, you simply examined the land with a view of comparing the value of this particular strip with the whole farm?

A. I did.

Re Direct examination.

. If Mr. Fleenor was permitted by the railroad company to move the shop and to move his fence and in addition to that

taking that all into consideration what would you still consider the value of the strip of land for farming purposes compared with the other land in the boundary for the same purpose?

A. I do not think it would change my opinion as to the value.

And further the Deposition is complete.

Signature waived.

Handwritten text, possibly a signature or date, located in the upper right corner of the page.

This deed made this the 6th day of October, 1904, by and between Charles Pennington and Mary A. Pennington his wife, of the first part, and W. E. Fleenor of the second part, all of the County of Lee and State of Virginia.

Witnesseth; That for and in consideration of the sum of Two Thousnad dollars (\$2000.00) in hand paid and secured to be paid, the receipt of which is hereby acknowledged, and to be paid as follows: (\$400.00) Four hundred dollars, cash in hand, one note for (\$600.00) six hundred dollars, due January 1st, 1905, One note for \$520.00, Five hundred and twenty dollars, due Jan. 1st, 1906, with interest from January 1st, 1905, and one note for (\$540.00) Five Hundred and forty dol~~ars~~ss, due January 1st, 1907, with interest from January 1st, 1905,, the parties of the first have this day bargained and sold and do by these presents hereby release and convey unto the said W. E. Fleenor party of the second part, the following described three pieces or parcels of land, lying and being in the County of Lee and State of Virginia, in the Poor Valley about one mile east from Ocoonita Depot, and is bounded as follows: North by the lands of James Baumgardner and Margaret Dockery and W. E. Fleenor, east by the land of John Grabill, south by the land of C. T. Hamblen and George Russell and west by the lands of David Pennington all containing 229 1/2 acres more or less, but this land is sold by the boundary and not by the acre. It being the same land which Charles Pennington now resides, and is made up of three tracts as follows: One tract of 185 acres land purchased ^{by} ~~from~~ Charles and Jeff Pennington ~~from~~ two of the heirs of J.D.S. Russell as shown by deed dated April 25th, 1883, from Ranson Russell & wife and John R. Gilley & wife and of record in Lee County Court Clerks Office in deed book No. 22 on page 110, to which deed reference is hereby made and also to a deed from W. ^{P.} Pennington & wife to Charles Pennington for W. J. Pennington's one-half interest, said deed is of record in Lee County Clerks office in Deed Book No. 33 page 465.

The second tract joins David Pennington's lands, and was assigned to Charles Pennington out of the estate of John Pennington his father by the comrs. who divided said lands and reference is here made to the report of said Comrs. Now of record in Lee County Clerks Office

this tract contains about 32 acres. The third tract is one-half of a tract of 25 acres which was entered by C. T. Hamblen and Charles Pennington, and adjoins the lands of both Hamblen and Charles Pennington. To have and to hold the above described three pieces or parcels of land with all the appurtenances thereto belonging unto the said W. E. Fleenor and his heirs forever. And the parties of the first part hereby warrant generally the lands hereby conveyed against the claims of all ~~other~~ persons. And the vendor's equitable lien is hereby expressly retained upon the lands hereby conveyed until, the purchase money is fully paid.

Witness the following signatures and seals, this the day and date first above written.

Charles Pennington (Seal)
her
Mary x A. Pennington (Seal)
mark.

Commonwealth of Virginia, Lee County, to-wit:

I, Henry C. Joslyn, a justice of the peace for the County of Lee, and State of Virginia, do certify that Charles Pennington and Mary A. Pennington his wife whose names are signed to the writing hereto annexed bearing date on the 6th day of October, 1904, have acknowledged the same before me in my County aforesaid.

Given under my hand this the 6th day of October, 1904.

H. C. Joslyn J.P.

Virginia, Lee County, to-wit:

In the Clerks office of Lee County, on this the 7th day of October, 1904. This deed was presented, and together with the certificate thereto annexed admitted to record.

Teste: H. C. T. Ewing, Clerk.

W. E. Flemon
from Copy of Deed.
Chas Pennington & wife

Chas pen 75-cts.
Exhibit "A"

This deed made this the 25 day of April 1882 between Ransom Russell and Mollie Russell his wife of the County of Boles State Missouri and John R. Gilley and Rebecca Gilley his wife (formerly Russel) of the County of Lee State of Virginia of the first part, and Charles and Jefferson Pennington of the other part, of the County and State aforesaid Witnesseth that the said Ransom F. Russell and wife and John R. Gilley and wife, for and in consideration of One Thousand Dollars to them in hand paid & secured to be paid as follows Fifty One (\$51) Dollars assumed to be paid to the heirs of Elizabeth M. Taylor Decd. with interest from the 17th February 1882, but payments not to be made untill said heirs become of the age of 21 years respectively, and Sixty (\$60) in hand paid to J. R. Gilley and Three hundred (\$300) Dollars paid to Edward Russell for the benefit of Ransom F. Russell, and the remainder of the one thousand secured to be paid by Notes executed to said Gilley and Russell by said Penningtons bearing interest from date of contract the receipt whereof is hereby acknowledged doth hereby grant and convey unto the said Charles and Jefferson Pennington their undivided interest in a certain tract or parcel of land lying and being in Lee County Virginia & in the Poor Valley, containing 427 acres be the same more or less, the said Russell and Gilleys interest being one half thereof according to Value and quality and being the same which was deed to them by John D. S. Russell, with the reservation that the said John D. S. Russell is to have all the timber off of said land he may want for his own use during his life. To have and to hold the said undivided half of said land, with all its appurtenances ~~there~~ unto except the above named reservation unto the said Charles and Jefferson Pennington forever. And the said Russell & wife & Gilley & wife Covenant with the said Penningtons that they will warrant generally the land hereby conveyed. Be it understood that a lien is hereby retained on said land for the deferred payments,

witness the following signatures and seals.

John R. Gilley (seal)

Mollie Russell (seal)

Ransom F. Russell (seal)

Rebeca C. Gilley (seal)

(
State of Missouri)
(
County of Boles)

Personally appeared ~~before~~ me a Notary Public within & for County & State aforesaid. Ransom F. Russell & Mollie Russell his wife whose names are signed to the foregoing deed bearing date on the 24" day of April 1882 personally appeared before N. P. in Boles County aforesaid and acknowledged the same, to be their act and ~~deed~~ deed for the purposes therein stated, and that Mollie Russell, wife of the said Ransom F. Russell, whose names , are signed above being examined by me privily and apart from the husband and having the writing aforesaid fully explained to he she the said Mollie Russell declared that she had willingly executed the same and does not wish to retract the same.

Given under my hand & seal this the 24" day of of April 1882
my term of office will expire Dec 28" 1882.

A. T. Mudd N.P.

Virginia Lee County to wit.

I, John A. G. Hyatt a commissioner in chancery for the County Court of said County do hereby certify that John R. Gilley and Rebeca C. Gilley his wife whose names were signed in my presents to the foregoing deed bearing date, on the 25" day of April 1882; personally appeared before me in my County aforesaid, and acknowledged the same to be their act and deed for the purposes therein ~~stated~~ stated and Rebeca C. Gilley wife of the said John R. Gilley being examined by me privily and apart from her said husband, and having the said Deed read and fully explained to her, she the said Rebeca C. Gilley declared that she willingly executed the same and does not wish to retract it.

Given under my this the 4" day of January 1884

J. A. G. Hyatt Comr. &c

Court

Virginia Lee County, Clerk's office the 12th day of March 1887.
The foregoing deed bearing date April 25th 1882 between Ransom Russell
& wife of Bates County Mo. John R. Gilley & wife of Lee County Va.
parties of the first, and Charles & Jefferson Pennington of Lee
County Va parties of the second part, was this day filed in this
office and admitted to record upon the foregoing certificates.

Teste John R. Gibson Clerk

A Copy,

Teste: J. H. T. Ewing Clerk.

(D. B. 22 page 110&c)

Ransom Russell et al
No. 3 Deed

Chas. Huntington et al

Copy -

No. 1"

Clerk \$1.00

This deed made this the 7th day of August, 1897, by and between Wm J. Pennington, and Lilly C. Pennington, his wife, of the first part, and Charles Pennington party of the second part, all of Lee County, State of Virginia, witnesseth, That for and in consideration of a deed of conveyance executed by the party of the second part, and his wife, Mary Ann Pennington to Wm. J. Pennington a party of the first part. on the 23rd day of July, 1897, the said parties of the first part doth hereby grant, sell and convey to the party of the second part ^{all} his right title and interest in and to a certain tract or parcel of land, lying in the Poor Valley, near the town of Occoonita, in Lee County, Virginia, being the ~~same~~ land on which Charles Pennington now resides, and which was conveyed to the said Charles and Jefferson Pennington by deed dated April 25th 1882 and executed by John R. Gilley, ^{Ransom F. Russell} Mollie Russell, ^A and Rebecca C. Gilley, which deed is recorded in the Clerk's office of Lee County, Virginia, in deed book No. 22, page 110, to which ^{reference} is here made for a more particular description of said land and the interest therein of the party of the first part, witness our hands and seals, this the day and date first above written.

W. J. Pennington (seal)

Lillie C. Pennington (seal)

Witness.

Wm. A. Orr. Sr.

A. B. F. McElroy

Virginia, Lee County, Court Clerk's office the 14th day of August, 1897.

I, S. V. F. Richmond Clerk of the County Court in and for the county and state aforesaid do certify that Wm. A. Orr, Sr. and A. B. F. McElroy whose names are signed to the foregoing writing bearing date the 19th day of 1897, as witnesses thereto, this day personally appeared before me in my said office and being duly sworn by me proved the execution and acknowledgement of the said writing by W. J. Pennington and Lillie C. Pennington whose names are signed thereto, before them and in their presence on the said 9th day of August, 1897, and that they witnessed the same at the request of

(2)

the said W.J. Pennington and Lillie C. Pennington, and the said writing is admitted to record.

Given under my hand this the day and year aforesaid.

Teste: S. V. F. Richmond Clerk.

A Copy,

Teste: *J. H. Storing* Clerk.

(D. B. No. 33, page 465)

Wm J. Pennington et ux
To & Deed
Charles Pennington

Copy

"No. 2"

Cost 50¢

(1)

This Deed made this the 27th day of November 1889, between W. J. Pennington, Charles Pennington and Mary A. his wife, of the County of Lee, and State of Virginia, parties of the first part, and the Louisville and Nashville Railroad Company, a corporation doing business under the laws of Virginia party of the second part, Witnesseth, That in consideration of the fact that said Louisville and Nashville Railroad Company has located and now proposes to construct its Cumberland Valley Branch over the lands of the said W. J. and Charles Pennington situate lying and being in the County of Lee and State of Virginia, and the advantages to be derived therefrom to the said Pennington's and the further consideration of the sum of Two hundred Fifty Dollars cash in hand paid the receipt of which is hereby acknowledged, the said parties of the first part have this day given, granted, bargained and sold and by these presents do convey to the Louisville and Nashville Railroad Company, its successors and assigns for its Cumberland Valley Branch a strip, piece, or parcel of land Two Hundred feet in width, beginning at a point in the center line of said Railroad as now located where said line crosses the division line between the lands of Charles Russell and said W. J. and Charles Pennington the bearing of which line is North 9° 10' West thence along said center line and parallel therewith a width of one hundred feet on each side of said center line for a distance of 3261 feet to a line of the lands of John Pennington containing 13 96/100 acres the same more or less. And the said Pennington further grant to said Louisville and Nashville Railroad the right to waste material on their said land outside of said strip at such points on their said land outside of said strip at such point or points as said Company or its Engineers may deem necessary not exceeding one hundred feet in width and not extending further eastward than Fishers barn. To have and to hold, said strip or parcel of land with its appurtenances and privileges to the said Louisville and Nashville Railroad Company, its successors and assigns forever. And the said parties of the first part for themselves, their heirs and assigns, do hereby release the said Louisville and Nashville Railroad Company, its successors and assigns from any further payments for or on account of the appropri-

ation and occupancy of said land as well as for all damages that may accrue from the location construction and operation of said Cumberland Valley Branch of the Louisville and Nashville Railroad over and upon said strip or parcel of land. And the said W. J. Pennington and Charles Pennington warrant generally the strip of land hereby conveyed. Witness the following signatures and seals this the day and year first above written.

W. J. Pennington (L. S.),

Charles Pennington (L. S.)
her

Mary A. x Pennington (Seal)
mark

Virginia: In Lee County, to-wit:

I, J. A. G. Hyatt Clerk of the Circuit Court in and for the County and State aforesaid, do certify that W. J. Pennington, Charles Pennington whose names are signed to the foregoing deed, bearing date the 27th day of November 1889, have acknowledged the same before me in my County aforesaid.

Given under my hand this the 26th day of February 1890.

J. A. G. Hyatt Clerk.

Virginia, Lee County, to-wit:-

I, D. C. Sewell Deputy Clerk for John R. Gibson Clerk of the County Court for Lee County, do certify that Mary A. Pennington the wife of Charles Pennington, whose name is signed to the within deed bearing date on the 27th day of November 1889, acknowledged the same before me to be her act and deed in my County aforesaid.

Given under my hand this 3rd day of May 1890. Given under my hand this 3rd day of May 1890.

D. C. Sewell Deputy Clerk for Jno.

R. Gibson Clerk for Lee County.

Virginia, Lee County, to-wit:-

In the office of the Clerk of the said County May 9th 1890, this deed was presented and with the certificates thereto annexed to record

Teste John R. Gibson Clerk.

W. J. Pennington & ab
To & Deed
L. & N. R. R. Co

Copy

"
No. 3"

Check \$.80

(1)

This Deed made this the 22nd day of February 1890, between John Pennington and Sarah M. his wife of the County of Lee and State of Virginia, parties of the first part and the Louisville and Nashville Railroad Company a corporation doing business under the laws of Virginia, party of the second part, Witnesseth that in consideration of the fact that said Louisville and Nashville Railroad Company has located and now proposes to construct its Cumberland Valley Branch over the lands of the said John Pennington situate lying and being in the County of Lee, and State of Virginia, and the advantages to be derived therefrom to the said Pennington, and in consideration that said Company make and maintain suitable and necessary crossings and cattle guards over said road and the further consideration of the sum of Two hundred and eighty dollars cash in hand paid, the receipt of which is hereby acknowledged, the said parties of the first part has this day given, granted, bargained and sold, and by these presents do convey to the Louisville and Nashville Railroad Company, its successors and assigns for its Cumberland Valley Branch a strip, piece or parcel of land beginning at a point in the center line of said railroad as now located where said line crosses the division line between the lands of Charles and W. J. Pennington and said John Pennington the bearing of which line is $N 4^{\circ} 10' W$ thence along said center line and with a width of (80) eighty feet on each side thereof for a distance of 1012 one thousand and twelve feet thence with a width of 50 feet on each side of said center line for a distance of 4522 feet to a line of the lands of Nimrod Noe the bearing of which line is $S 21^{\circ} 50' W$ containing 14.20 acres. To have and to hold, said strip or parcel of land with its appurtenances and privileges to the said Louisville and Nashville Railroad Company, its successors and assigns forever. And the said parties of the first part for themselves, their heirs and assigns, do hereby release the said Louisville and Nashville Railroad Company its successors and assigns, from any further payments for or on account of appropriation and occupancy of said strip of land as well as for all damages that may accrue by or result from the location construction and operation of

(2)

said Cumberland Valley Branch of the Louisville and Nashville Railroad over and upon said strip or parcel of land. And the said Pennington warrant generally the strip of land hereby conveyed with all its appurtenances.

Witness the following signatures and seals

his
John x Pennington (I.S.)
mark

her
Sarah x Pennington (I.S.)
mark

Virginia: In Lee County, to-wit:-

I, Vincent H. Kelly, a N. P. in and for the County and State aforesaid, do certify that John Pennington and Sarah M. Pennington his wife whose names are signed to the foregoing deed bearing date the 22nd day of Feb 1890, have acknowledged the same before in my County aforesaid. Given under my hand this 19th day of April 1890.

Vincent H. Kelly N. P.

Virginia, Lee County, to-wit:

In the office of the Clerk of ^{the} said County April 19th 1890 This Deed was presented and with the certificate thereto annexed admitted to record.

Test Jno R. Gibson Clk

A Copy,

Teste: *J. H. Gibson* Clerk.

(D. B. No. 25, page 33 & c)

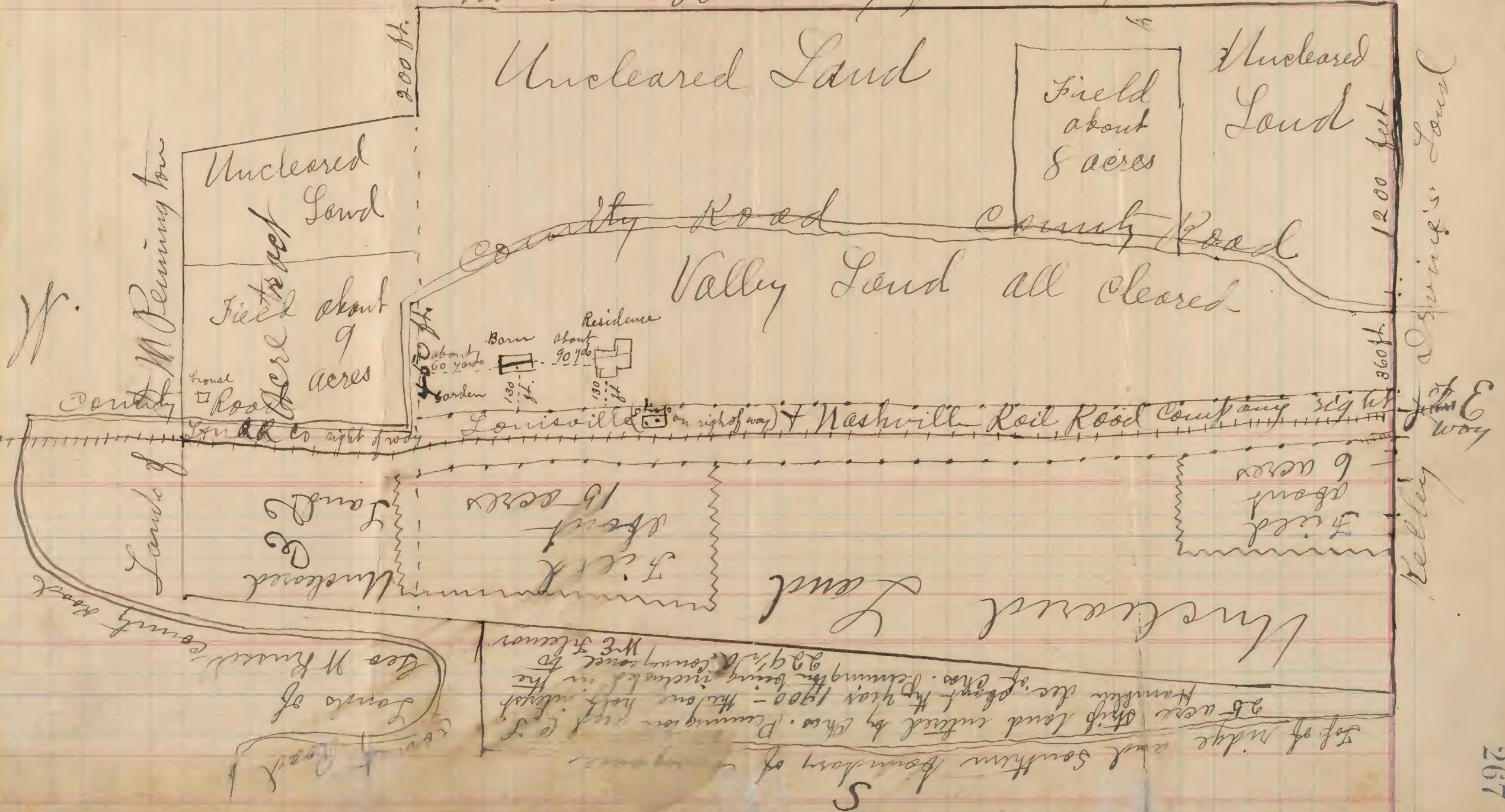
John Pennington et ux
To { Deed }
L & N B. R. Co.

Copy

"No 14"

@ lirk. 75¢

N.
Northern boundary of conveyance.



1901 Whitehead J. M.

				315
Jan. 19	To	Shoes		200
"	"	"	Castor Oil	10
"	"	"	Turpentine	10

Feb. 14	To	H. Shoes		40
"	"	"	Time	15
"	17	"	Powder coffee lead	96
				671

Oct 10	"	Hasse shoe iron		58
"	15	"	Balls	20
"	21	"	H shoe iron	22
Nov	"	"	H shoe	05-

1472				776
Jan 15	To	Cr. for cash		500
				276

Diagram

N. E. F. Union -

Also

Chas. Pennington

P. decided to follow 2 strips of land one which
his father John P. ^{the} bought of Henry Russell -
P. & his father died to R.R. Co. 100 x 80 ft. section
on each side of track -

P. when he sold to F. said ~~the whole of the~~ ^{the whole of the} ~~left~~
of R.R. right of way - as measured by
the boundary - did not as left the right
of way - He does not deny having represented
that he owned within 60 ft of R.R. -

F. has done 10 or 15 ft of work on the
right of way -

Fluor

and

Pennington

Memo for Mrs

Pennington Pays an^{his} Depositor N.P. \$ 9.75

W. 2.50

S. 1.50

Ch. 3.80

N.P. 12.00

W. 3.00

Greenor Depts

This Pennington must pay.

\$ 32.55-

Pennington receives-

\$ 5.50

@ 5.27 D.

\$ 15.00

by 1.50 arr

22.27-

67.89

\$ 90.16

7.00

87.16

Returned by Greenor

Depts

\$ 25.00

Charles Pennington vs W. E. Minor.

Costs of deposit to be paid by P. H. & C. 3.50 P.
J. P. 9.75 - P.

Witness - D. R. Hale	.50	
Arthur Garrett	.50	
C. C. Flannery	.50	R.
Edw. H. Flannery	.50	D.
W. P. Sprinkle	.50	R.
Shiff - Chas. Perry	1.00	R.
A. R.	12.00	R.
	<hr/> 29.05	

Costs of Suit to be paid by Deft. Shiff -

(Starletan)	5.50
Ch.	5.27
A.	15.00
Exp. Am.	1.50

Debt to be paid by Phil	\$ 22.27
	67.89
Debt to be paid by Deft	\$ 90.16
Deft retained witness fees paid by him -	3.50
which is all of his witness fees. Paid Mr.	87.16

Over is to pay, with this casts	\$29.05-
Over & back	22.27
	15.00
Sent check to Biff.	20.34
	<hr/>
Leaves for postage &c	86.66
	1.58
	<hr/>
	88.16

On to Cape Byron Feb 24 th 196.	(A. for this book)	.50
" " " " " " " " " " " "	" " " " " " " " " " " "	1.00
" " " " " " " " " " " "	" " " " " " " " " " " "	.00
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" " " " " " " " " " " "	" " " " " " " " " " " "	12.00
" " " " " " " " " " " "	" " " " " " " " " " " "	9.07

Chas Remington.
153 N. 1st St.
St. E. Denver.

To Chas. Cunningham

TAKE NOTICE THAT I shall on the 29th day of Nov. 1905, at
R. H. Cunningham's Law Office in Jonesville, Va. between the
hours of 8 A. M. and 8 P. M., of that day, proceed to take the depositions of W. E.
Fleming and others, which, when taken, are
intended to be read as evidence in my behalf, in a certain suit in Chancery now
pending in the Circuit Court, of Lee County, Virginia, wherein you are Plaintiff
and I am Defendant; and if, from any cause, the taking of said depositions be not com-
menced on that day, or, if commenced, be not concluded on that day, the taking of the same will be adjourned and con-
tinued from day to day, or from time to time, and from place to place, or at the same place, until the same shall be com-
pleted.

Respectfully yours,

W. E. Fleming

By P. B. Attys

W. E. Fennor

no. 2 }

Notice to Take
Depositions.

Chas Cunningham

P. Bros

P. Q.

no 29th 1935.

Best Service is
accepted. no 154700.
Chas Cunningham
By Mr. Fennor

The Commonwealth of Virginia,

To the Sheriff of the County of Lee, Greeting:

WE COMMAND YOU, That you summon

H. C. Flenor

to appear at the Clerk's office of the Circuit Court of the County of Lee, at rules to be held for the said court, on the *1st* Monday in *September*, 190*5*, to answer a bill in chancery exhibited against *him* in our said court, by *Charles Pennington*

And have then there this writ. Witness, H. C. T. EWING, Clerk of our said Court, at the court-house, the *23^d* day of *August*, 190*5*, and *130th* year of the Commonwealth.

A Copy, Teste:

H. C. T. Ewing, Clerk.

_____, Clerk.

Charles Pennington

VS

}

SUBPENA
IN
CHANCERY.

W. E. Flenor

Chr. & Hoch p. 1

To 1st September Rules.

See Circuit Court
1905.

Executed by delivery
in attested copy of
the within writ to
W. E. Flenor this 28
day of Aug. 1905.

E. H. Latta & Spivey
for P. M. Bull & Co.

0208 = 28 - 28

28 P 2 - 1201 - 15.

The Commonwealth of Virginia,

To the Sheriff of the County of Lee, Greeting:

WE COMMAND YOU THAT YOU SUMMON

Wm J Pennington, J. R. Vae, Riley
Pearssington, & Elbert Garrett

A. O. Brown Notary Public Law office of James N O'Brien
to appear before the Judge of our Circuit Court of the County of Lee, at the court-house thereof, on the *30th*
day of *January* 190*6*, to testify and the truth to say in behalf of the *Plaintiff*
in a certain matter of controversy in our said court before the
said Judge depending and undetermined between *Charles Pennington*
Plaintiff, and

W. E. Gleason Defendants . And this *they*
shall in no wise omit, under the penalty of £100. And have then there this writ.

Witness, H. C. T. EWING, Clerk of our said court, at the court-house the *29th* day of *Jan'y*
190*6*, and in the 12 year of the Commonwealth.

H. C. T. Ewing, Clerk.

Jamesville Va

Chas Pennington

VS.

SUBPOENA
FOR
WITNESS

W. E. Fleener

Court

the day of

190

Executed By summoning
all the within
witnesses this
29 day of Jan 1906

C. E. Denny
108

for P. M. Ball

S. L. C.

The Commonwealth of Virginia,

To the Sheriff of the County of Lee, Greeting:

WE COMMAND YOU THAT YOU SUMMON

Garrett

H. P. Sprinkle and Elbert

A. C. Brown, Notary Public at *J. H. Orr's office, in Jonesville, Va.*
to appear before the Judge of our Circuit Court of the County of Lee, at the court-house thereof, on the *26th*

day of *January* 190*6*, to testify and the truth to say in behalf of the

Chas. Cunningham, in a certain matter of controversy in our said court before the
said Judge depending and undetermined between

Chas. Cunningham

Plaintiff, and

W. E. Fluor

Defendants

And this

they

shall in no wise omit, under the penalty of £100. And have then there this writ.

Witness, H. C. T. EWING, Clerk of our said court, at the court-house the *25th* day of

January 190*6*, and in the *30th* year of the Commonwealth.

H. C. T. Ewing, Clerk.

Chas. Punnington

VS.

SUBPOENA
FOR
WITNESS

W. E. Plummer

Lee Circuit Court,

the 26th day of Jan'y.

1906.

Executed By Summon
ing W. P. Sprink

This 26 day of Jan'y 1906

C. E. Henry D. S.

For P. M. Ball S. S. C.